

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

NOV. 3
COLBY
RR-JOHNSON

197

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,611

WALTER G. BURTON, JR.,

Appellant.

v.

THOMAS O. PAINE, JR., DIRECTOR,
NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION, ET AL.,

Appellees.

APPEAL FROM A JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 20 1970

Nathan J. Paulson
CLERK



(i)

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JOINT APPENDIX

Docket Entries

UNITED STATES DISTRICT COURT
for the District of Columbia

Civil Action 2355-69

Date	Proceedings
1969	
Aug. 19	Complaint, appearance. Filed.
Aug. 19	Summons, copies (6) and copies (6) of Complaint issued; Deft. No. 1 and U.S. Atty. Ser. 8-25-69; Deft. No. 2 Ser. 9-8-69; Defts. 3 & 4 Ser. 9-8-69; Atty. Gen. Ser. 8-26-69; Answer of defts. to complaint; c/m 10-30-69; appearance of Thomas A. Flannery and Ellen Lee Park. Filed. Calendared AC/N. (N)
1970	
Jan. 12	Motion of pltf. for summary judgment; statement; P&A; c/m 1-9; M.C. Filed.
Jan. 21	Points & Authorities of pltf. in opposition to motion for summary judgment; c/m 1-21. Filed.
Jan. 21	Objections of deft. to statement of facts pursuant to local Rule 9(h); exhibit #1 (5); c/m 1-21; M.C. Filed.
Jan. 29	Opposition of pltf. to deft's objections to statement of facts; c/m 1-28. Filed.
Feb. 11	Motion of deft. for summary judgment; statement; P&A; c/m 2-10-70; M.C.; appearance of Thomas A. Flannery and Ellen Lee Park. Filed.
Feb. 18	Objection by pltf. to defts' statement of facts under Rule 9(h); c/m 2-17. Filed.
Feb. 18	Opposition of pltf. to motion for summary judgment; c/m 2-17. Filed.
Apr. 1	Objections to pltf's statement of facts overruled, despite superfluity. (N) (Fiat) J. McGuire.
Apr. 1	Memorandum of pltf. in support of pltf's statement of facts. Filed.
May 20	Memorandum of defts. with respect to pltf's statement of facts; c/m 5-20. Filed.
May 26	Order denying pltf's motion for summary judgment; granting defts' motion for summary judgment and dismissing the cause. (N) J. Hart.

App. 2

- July 21 Notice of appeal of pltf from order of 5-26-70; deposit \$5.00 by Murtha; copy mailed to Ellen Lee Park. Filed.
- July 21 Cost bond on appeal of pltf in the sum of \$250.00 with Northwestern National Insurance Company of Milwaukee, Wisc; approved. Filed.
- Aug. 20 Ordering granting motion of pltf for extension of time in which to file appeal to and including 9-15-70. J. Jones.
- Sep. 8 Transcript of proceeding May 25, 1970; pgs 2; (Court Reporter Patrine Brockmeyer, Courts Copy). Filed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WALTER G. BURTON, JR.
5902 85th Avenue
New Carrollton, Maryland

Plaintiff,

v.

THOMAS O. PAINE, ADMINISTRATOR
National Aeronautics Space
Administration
Code A
Washington, D. C. 20546

ROBERT E. HAMPTON, CHAIRMAN
JAMES E. JOHNSON, VICE CHAIRMAN
L. J. ANDOLSEK, COMMISSIONER
United States Civil Service
Commission
1900 E Street
Washington, D. C. 20415

Defendants.

Civil Action No. 2355-69

FILED

AUG 19 1969

ROBERT M. STEARNS, Clerk

COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

Plaintiff complains of defendants and alleges;

1. The plaintiff is a citizen of the United States and a resident of the State of Maryland.
2. Thomas O. Paine is the duly appointed, qualified and acting Administrator of the National Aeronautics Space Administration, hereinafter referred to as N.A.S.A., and is officially charged by law with the administration of laws and regulations relating to the employment of civilian employees at N.A.S.A.

3. Defendants Robert E. Hampton, James E. Johnson, and L. J. Andolsek are respectfully the duly appointed, qualified and acting chairman, vice chairman, and member of, and composing, the United States Civil Service Commission, hereinafter referred to as the Commission; said Commission being charged by law with the administration of laws of the United States relating to the appointment and retention in the service of civilian personnel in the services of the United States.

4. This court has jurisdiction under sections 701 et. seq. of Title 5, sections 1361 of Title 28, and sections 2201 and 2202 of the United States Code.

5. Plaintiff at all times material hereto, was an employee of the United States and was duly qualified as such employee under the laws and regulations pertaining to the competitive Civil Service and was employed by N.A.S.A.

6. The plaintiff enlisted in the United States Air Force on September 16, 1946, and served continuously until he was honorably discharged on September 15, 1949.

7. The plaintiff was first employed in the competitive service of the United States on March 28, 1956, and continued in such employment rising in grade from G. S. 5 in 1956, to G. S. 14 in 1963. On March 29, 1968, the effective date of the separation of the plaintiff from his employment as aforesaid, the plaintiff had been employed in the civilian service of or serving in the armed forces of the United States for a period of sixteen years.

8. The plaintiff was separated from his employment as aforesaid, effective March 29, 1968. The plaintiff appealed his separation to N.A.S.A. and after the appeal was denied, he appealed to the Appeals

Examination Office of the Commission on April 7, 1969. He thereafter appealed to the Board of Appeals and Review of the Commission from the adverse decision of the Appeals Examiner. The Board of Appeals and Review upheld the decision of the Appeals Examining Office on June 27, 1969.

9. The plaintiff was an outstanding expert in the field of administration and engineering related to electronics engineering. Up to the time of his separation, he had always received performance ratings of satisfactory or better; he had also received letters of commendation and no letters of reprimand or been otherwise the object of disciplinary action.

10. The action of the Defendant Director in discharging plaintiff and the action of the members of the Commission, defendants herein in upholding such discharge was arbitrary, capricious and contrary to law for the reasons as hereinafter stated:

The said actions of the defendants were in violation of Title 5, United States Code, Sections 7501 and 7512 in that the discharge was not "only for such cause as will promote the efficiency of the service"; was not based on the charges issued to the plaintiff; was not based upon a decision on the "answer" of the plaintiff; was outside the spirit and letter of the statutory provisions and not in good faith.

11. The action of the Defendant Director in discharging plaintiff and the action of the members of the Commission, defendants herein in upholding such discharge was further arbitrary, capricious and contrary to law for the reasons as hereinafter stated:

The discharge was in violation of the Rules and Regulations of N.A.S.A. and the Civil Service Commission in that: 1. N.A.S.A. failed to give counseling and guidance to the plaintiff as required by Federal Personnel Manual (hereinafter referred to as "FPM" Chapter 430, Performance Evaluation, N.A.S.A., FPM Supp. No. 13, December 17, 1964, FPM 430-3 Subchapter 1-3 and 1-4; N.A.S.A. 430-2-2, Supp. 13, 430-2-3 and 430-2-5; 2. Placing plaintiff on leave without pay without his consent violates FPM 630, Subchapter S 12, GMI 3630.5, November 10, 1966; 3. Chapter 751 of FPM and N.A.S.A. regulations conforming thereto because full consideration was not given to "all factors involved" in determining the penalty imposed and because of a failure to weigh mitigating circumstances and the frequency of the offense; and because the discharge did not accord, as the regulations require, with justice in the particular situation; 4. Defendants failed to comply with FPM 752-2-4 and 752-10; 5. The punishment was harsh and unwarranted and contrary to the standards of discipline as established by N.A.S.A. (N.A.S.A. Appendix Chapter 751, Subchapter 1) and because; 6. The following Rules and Regulations were not complied with FPM 430, 531, 630, 735, 751, 771, 772, and Supp. 900-1, Executive Order 10987 and other Rules and Regulations of the Commission and N.A.S.A.

12. The discharge, as hereinbefore alleged, was further arbitrary, capricious and contrary to law in that the action of N.A.S.A. and of the Commission was not in good faith and was instead based upon bias, prejudice and malice on the part of N.A.S.A. toward the plaintiff

so that the discharge was not for such cause as would promote the efficiency of the service as required by 5 USC 7501 and 7512.

13. The discharge was further unlawful in that the letter of charges did not fully and adequately state charges which could lawfully be the basis for discharge or as to which the plaintiff could defend for the reason that the letter of charges and the decision of the Director of N.A.S.A. were confined to a period i.e. January 11 to February 13, 1968 during which until January 24, 1968 the plaintiff did not have an official job description or an official assignment to the new unit where he was employed.

14. The actions of the defendants were further arbitrary, capricious and unlawful in that the plaintiff was not responsible for refusing to perform an assigned duty not only because a clear and specific assignment was not made, but also because N.A.S.A., by its conduct, words, and practices prevented the plaintiff from performing in 1968, first by a long period of harassment, by isolation, and by not giving plaintiff a job description and an official assignment in 1968, but instead by placing plaintiff in leave without pay without his consent and finally by refusing to give plaintiff the tools, backing, cooperation and assistance necessary for anyone to perform - all at a time when plaintiff was ready, willing, and able to perform.

15. The actions of N.A.S.A. were further arbitrary, capricious, and unlawful in that the discharge was not for any reason under law or regulation, but based upon prejudice, bias and malice in that the plaintiff was kept in isolation for two or more years prior to January 1968, and subjected to a course of unlawful conduct by N.A.S.A. calculated either to force a resignation or to create just such a circumstance as that which led to plaintiff's discharge; that this intent was present

is further marked by the precipitate and unprecedented action of N.A.S.A. in cutting off funds to plaintiff by unlawfully placing plaintiff on involuntary leave without pay, thus depriving plaintiff of any means with which to support his family or defend himself; the total effect of such unlawful and improper action was that the plaintiff in January and February of 1968 did not fail or refuse to perform in any lawful sense, but that his actions during this period were forced upon him and controlled by the said unlawful and improper actions of the Defendant Director.

16. The plaintiff has exhausted all of his administrative remedies.

17. The plaintiff's rights as a government civilian employee and as an honorably discharged member of the United States Air Force are being willfully and unlawfully violated by the said defendants, all of whom have full and complete knowledge of the plaintiff's rights and that it is the plain ministerial duty of the defendants to reinstate the plaintiff to the rightful position from which he was wrongfully removed, retroactive to the date of the wrongful removal.

Wherefore plaintiff prays:

I. That the court determine as a matter of law that:

(a) That placing and keeping an employee in virtual isolation for two years including six months of total isolation, refusing and failing to give him the support and facilities necessary to perform a job, plus failing to give him guidance and counseling, constitutes bias and prejudice and creates, at the end of such period of isolation, an obligation on the part of the government to meet with the employee and resolve the employer-employee relationship problem which has been the cause of such tragic waste of the established professional skills

of a valuable employee, but in addition, of many thousands of dollars of the tax-payers.

(b) Under the circumstances set forth in paragraph (a) of this prayer, an employee has a right to ask for a resolution of whatever personnel problems exist before he accepts what purports to be a new assignment and the government is estopped to insist upon blind obedience without assuring the employee that the conditions which made performance impossible will be eliminated.

(c) That where an employee is asked on January 11, 1968 to perform a task on January 13, 1968, and where there does not then exist either a job description or an official assignment to an entirely new division of an agency, and where thereafter, on January 24, 1968 he is given a job description and an official assignment, and where on the same day he is placed on leave without pay which continues until March 29, 1968, on which date he is separated, then such separation is contrary to the provisions of 5 USC 7501 and 7512, contrary to the Regulations of the Civil Service Commission, FPM 630, Subchapter S 12, and contrary to the Regulations of N.A.S.A.

(d) That the failure and refusal of the Administrator and the Civil Service Commission to consider plaintiff's answer alleging the improper and unlawful conduct of the Administrator in isolating the plaintiff for a period of approximately two years, which constituted a substantial and material answer to the charges, is specifically contrary to the Congressional directive as set further in 5 USC 7501 (4).

(e) That the facts considered as a whole, established that the discharge of the plaintiff was not in good faith and was not for the refusal to perform a particular task, but was instead inspired by bias and prejudice existing over a long period of time prior to the discharge.

(f) That under the circumstances of this case the action of the Administrator was arbitrary and capricious in that it was not done, as required by statute, for such reason as would promote the efficiency of the service.

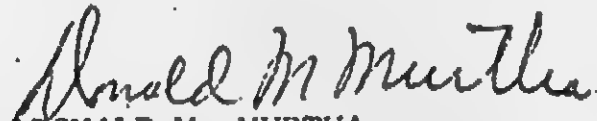
(g) That under the circumstances of this case, the actions of the plaintiff with respect to his job performance in January 1968 were involuntary and forced upon him by the unlawful actions of the Defendant Administrator of N.A.S.A.

(h) That under all of the circumstances of this case the plaintiff did initiate a constructive grievance which as a matter of law, constituted a valid grievance within the pertinent rules and regulations of N.A.S.A. and the Commission.

(i) That the submission of a new job description to plaintiff in January 1968 which supported a grade lower than grade 14, constituted a violation of 5 USC 7511 and 7512 in that it constituted a reduction in rank and pay without notice.

II. The defendants, their agents, successors and assigns are enjoined and ordered to cease and desist in the practices herein declared to be unlawful, and that the defendants proceed immediately to restore the plaintiff to the position from which he was separated as of the date of his separation on March 29, 1968.

III. That the plaintiff be granted such other and further relief as to the court may appear equitable and just in the premises


DONALD M. MURTHA
1009 Tower Building
Washington, D. C. 20005
Tel. No. 347-2933
Attorney for the Plaintiff

[Caption Omitted in Printing]

Civil Action

No. 2355-69

ALBERT

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense

This is an action seeking judicial review of the separation of a federal employee. The only evidence properly before the Court is that in the administrative record to be filed herein by defendants. On the basis of that record defendants answer the numbered paragraphs of plaintiff's complaint as follows:

1. 2. 3. They admit the allegations of paragraphs 1, 2 and 3.

4. They deny the allegations of paragraph 4 but they admit that this Court has jurisdiction to consider this cause.

5. They admit the allegations of paragraph 5, except that they aver that plaintiff ceased to be a federal employee on March 29, 1968, the effective date of his removal.

6. 7. They admit the allegations of paragraphs 6 and 7.

8. They deny that plaintiff appealed to the Appeals Examining Office on April 7, 1969, but admit that he appealed to that office and they admit the remaining allegations of paragraph 8.

9. They deny the allegations of paragraph 9, except that they admit that plaintiff was rated satisfactory or better, that he received letters of commendation and that he received no letters of reprimand and was not otherwise the object of disciplinary action.

10. 11. 12. 13. 14. 15. They deny the allegations of paragraphs 10 through 15.

16. They admit the allegation of paragraph 16.

17. They deny the allegations of paragraph 17.

/s/
THOMAS A. FLEMING
United States Attorney

/s/
JOSEPH R. HANCOCK
Assistant United States Attorney

/s/
ELLEN E. PARK
Assistant United States Attorney

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

Civil Action

No. 2355-C9

MOTION FOR SUMMARY JUDGMENT

Plaintiff, through his attorney, respectfully moves the Court for Summary Judgment for the reason that there is no genuine dispute as to the material facts and that the plaintiff is as a matter of law entitled to judgment. Plaintiff's motion is based upon the pleadings and the records which have

been lodged with the Court by the Civil Service Commission and for reasons more fully elaborated in the attached Statement of Facts and Points and Authorities.

Respectfully submitted,

DONALD M. MINTHA
1000 Tower Building
Washington, D. C. 20005
Telephone: DI 7-6489

Attorney for Plaintiff

[Caption Omitted in Printing]

STATEMENT OF FACTS
PERTAINING TO COMPLAINT 2(a)

This is an action for Declaratory Judgment and Injunction seeking to set aside, as unlawful, the discharge of Plaintiff from a position with an agency of the United States, and to restore plaintiff to that position. A motion by plaintiff for summary judgment is filed herewith and for the purpose of this motion, the material undisputed facts are as follows:

A. Background and Experience of Plaintiff

1. Walter J. Earton, Jr., age 38, came to the NASA (1956) with a substantial background in education and experience. He had served in the Air Force and as a staff sergeant in the Ground Communications Systems. He was a graduate of the University of Virginia with a degree of Bachelor of Electronics Engineering. His education has been supplemented by several training courses at Goddard, including the Dale Carnegie Leader-

ship Program. (A. 168-1/) In the early 1940's, appellant also had experience as an employee of the Navy Department, Norfolk Naval Air Station.

2. Appellant came to the space agency in 1956. He was first employed in the Instrumentation Research Division and Telemetry Instrumentation Section at Langley, Virginia, with a beginning grade of GS-5. (A. 170, CSC 107). Appellant received grade increases about every six months during the first years and since then has been increased a grade from time to time until 1964 when he was promoted to his present grade - GS-14.

3. Appellant has summarized the work he did at Langley. (A. 169-174, CSC 107-110). He was involved in supervision, design, construction and testing activities related to around-the-world tracking stations for space vehicles such as the Mercury project, including ground tracking and instrumentation. (A. 171) He supervised eight or nine senior engineers and seventy-five to eighty contractor employees. (A. 172)

4. The sworn statements of Harold H. Youngblood and George B. Graves, Jr., who were appellant's supervisors from 1956 to 1961, spell out in detail the high grade of performance of the appellant during that period while at Langley. Mr. Graves is now Chief of Instrumentation Research Division, and Mr. Youngblood is Chief of Instrumentation Research Branch, both Langley.

1/ "A" refers to the Transcript of the Agency Hearing.
 "CSC" refers to the Transcript of hearing before the Appeals Examining Office of the Civil Service Commission
 "Exhibits" include plaintiffs Reply to Charges, which includes several attachments divided into four groups, marked I through IV; agency hearing exhibits, and exhibits at Civil Service Commission hearing, which are marked for agency (Agency Ex.) and for plaintiff (App. Ex.)

(CEC 112). These statements were sent directly to the agency hearing officer and are a part of the record in this case.

Typical of this evaluation are the following statements [from App. Ex. 1 Agency Hearing]:

[Appellant] has demonstrated a very high degree of initiative and industriousness. He was unusually interested in understanding and learning his job and frequently worked unpaid overtime, in an attempt to isolate a particularly difficult problem."

"During this period Mr. Burton displayed outstanding initiative and drive in carrying out his assignment, and his technical ability and experience were important factors in effectively carrying out the test program. During much of the time and intense schedule pressure was in existence and Mr. Burton's aggressiveness in identifying the problems and contributing to timely solutions was very important."

It was noted in this evaluation that there were times where "a lack of tact in dealing with other personnel was evidenced."

The evaluation at this point goes on to state:

"However, considering the nature of the program and the very significant contributions made by Mr. Burton it is considered that his performance was well above average."

5. On arriving at Goddard in 1961, appellant worked in the development of the Engineering and Training Center, working part of the time at Goddard and part of the time at Wallops Island, both under NASA. (A. 173, CEC 111-113). He was given a grade increase to come to Goddard, i.e., GS-13, (A. 173) and in 1964 was made a GS-14. Following this, appellant has been employed in various staff capacities. Staff officials are charged with carrying out programs but do not have personnel under them; instead, they must rely on help secured from others.

Many employees of Goddard in high and low positions have come forward to testify that appellant has high qualifica-

tions, ability, devotion to work and a good reputation for truth. Their testimony, which is uncontradicted, is set forth on the following pages of the transcripts:

Hiles Roy Heller, Division Chief, Manned Flight Support Division (A. 104-108 CSC 2-0, 17, 23-25)

James C. Jackson, Head, Logistics Management Office of Tracking and Data Systems Directorate (A. 131, CSC 36 et seq.)

Virgil F. Gardner, Flight Engineering Division, Engineering Support Branch (A. 95)

George James Karras, Manned Flight Operations Division, Code 520 (A. 115)

Michael A. Cushman, Manned Power Utilization Division (A. 143)

Almost all of these persons have known appellant since about 1958 and have worked with him both at Langley and at Goddard.

6. Appellant had been employed for approximately 15 years in the competitive services and his performance ratings had always been satisfactory. In addition to grade increases, plaintiff has also received step increases, letters of commendation and no letters of reprimand or other disciplinary action. (Def. Answer, para. 9).

B. Facts Relating to the Calculated Destruction of Plaintiff

7. During the first three months of 1968 and for more than a year prior to January 1968, the Defendant Director had followed a course of conduct calculated either to force plaintiff's resignation or to force a reaction on plaintiff's part which would provide technical grounds for discharge proceedings. This course of conduct is reflected without dispute in the records as follows:

(a) From August 1966 to May 1967, the plaintiff did not have a viable position description. (CSC 122) The lack of a job description was a practical as well as psychological handicap because plaintiff did not have a responsible assignment or any explanation of the reasons behind management's treatment of him. (A. 134-135, CSC 113, 119)

(b) After 1966, plaintiff was in a staff position which depended not only upon the backing of his supervisors but also upon cooperation from persons in his Division as well as in other Divisions. (CSC 121, 122). Plaintiff was not given the backing the job required. People would refuse to attend meetings called by plaintiff. (A. 133, 130, CSC 129, 130). On one occasion he was assigned to Mr. John Cook, Station Manager, to work on the development of a hydromechanical facility but Mr. Cook stopped holding weekly meetings, as plaintiff was told, because plaintiff would be participating in such meetings.

(A. 133) In addition, plaintiff never got any cooperation or response to plans and specifications sent to Mr. Cook. Mr. Cook would not talk to Plaintiff. Mr. Cook, by his actions, rejected plaintiff as Division representative. The fact that plaintiff was not being given support in performing his staff functions prior to November 1967 and that he was virtually without any major assignments is corroborated by the testimony of Mr. Jackson, assistant to Mr. Roberts (A. 135, 136, 139) and by Mr. Harris (A. 116-117) and by Mr. Gardner (A. 100-101). Mr. Jackson specifically testified "and I don't feel that he received full cooperation in carrying out his budget task because of the

reticence on the part of the people involved to support him ***
 *** I know there was some lack of support." (A. 136)

(c) In 1967 plaintiff was doing little more than preparing minutes of staff meetings and working on a "travel budget" assignment which was "a one time a month, very limited thing, I had no assignment to occupy eight hours a day." (A.136)

(d) In early 1967 plaintiff realized that progress to get a definite job assignment and have some regular work to do was not being made and was beginning to get to him (plaintiff) "physically". (A. 137) Mr. Roberts, who was Chief of the Division, was in the next office to plaintiff, but he was never permitted to meet and discuss with Roberts the treatment he was receiving. Plaintiff, early in 1967, called Roberts at home and discussed filing a grievance because for 18 months nothing concrete had been assigned to utilize plaintiff's energies. (A. 137, CCC 139, 131). Roberts promised to go over to personnel office with plaintiff and see what had to be done. (A. 137). This was not done.

(e) Roberts, in March 1967, gave plaintiff an assignment to work on the FY 1968 budget. To carry out the assignment plaintiff called a meeting. "When the time came the people didn't show up, key people, the ones that were there, wandered in and out." (A. 189, CSC 129, 130). Plaintiff then wrote a memorandum setting up another meeting for the next week and again the key people didn't show up. (A. 190, CSC 129, 130) This all occurred in early April 1967, and both Mr. Thompson and Mr. Roberts were informed directly in writing of the facts regarding lack of support for plaintiff's assigned

program. (A. 130, CSC 130) In fact, again, Mr. Roberts could not be talked to. (A. 130, CSC 131, 134). After a few days of trying to see people "piecemeal" without a meeting, plaintiff wrote a memorandum to Mr. Roberts "detailing the effort, the difficulties," and included the difficulty of not being able to talk to Mr. Roberts, and had the memorandum hand-delivered to Mr. Roberts' home. (A. 130, 131, CSC 131) Attached to the memorandum were copies of memos reflecting the lack of support being given to plaintiff. Roberts ignored this and, finally, plaintiff wrote a memo through channels spelling out his grievances and forwarded it to all of the higher officials, including Dr. Clark, the Director of Goddard Space Flight Center, Mr. Thompson and Covington (who eventually in January 1968 became plaintiff's immediate supervisor, and who fired him) and plaintiff also sent a copy of the memo to personnel. (CSC 135, App. Ex. 8 and 9)

(f) After the receipt of a job description which was effective in May 1967, plaintiff nevertheless was not given anything to do for six or more months following that date. Plaintiff was left in complete isolation during this period and was not contacted by anyone for six months. (A. 132, 133, CSC 135) The entire Division was reorganized but without any communication between management and plaintiff as to where he would fit in. (CSC 135). A meeting was held about October 10, 1967 and all employees of all grades were called together to discuss the plans and details of reorganization, but plaintiff was not informed. Plaintiff inquired of Mr. Roberts' secretary as to why he wasn't informed and she

said it was because he had not been requested to go. (CSC 141). On October 18, 1967, plaintiff, having heard via the grapevine of his probable reassignment, (A. 195, 196, CSC 138-142) wrote a note to Mr. Covington who was the head of the Manned Flight Support Division, and stated he had heard that he was to go to Mr. Covington's Division. In the same letter he asked for a conference to resolve the problem of his past relations with management. (Plaintiff's reply to charges, Part IV, Reference #2 and #3). Mr. Covington, Director of Code 800 ^{2/}, did not reply, but Mr. Thompson who was the Deputy Assistant to Mr. Covington, replied informing plaintiff of his transfer and stated that about the middle of November he would discuss with plaintiff the new assignment. Plaintiff's desk and other equipment were moved over to Code 800 on November 17, 1967 and were crowded into a space already occupied. (A. 196, 197, CSC 143) Plaintiff ^{first} saw Mr. Thompson for about five minutes. on November 22, 1967 when a project was given to plaintiff. (A. 198, CSC 144) Plaintiff tried to go ahead with the assignment Mr. Thompson had given him on November 22nd but he had to obtain data from others, including Mr. Roberts. He was not given cooperation and in order to obtain authoritative backing, plaintiff prepared a memorandum to be signed by Mr. Thompson and to be routed to key individuals, instructing them to assist plaintiff. Mr. Thompson refused to send out this memo or any others. (A. 199, CSC 145) Plaintiff met with

2/

Code 800 is the code designation for the Manned Space Flight Directorate. This was physically located several miles away from Mr. Robert's Division.

The group about December 8th and referred to his memo of May 19, 1967 (Copy to Gannett, Part IV, refer #1) and tried to discuss overall problems but this was not done. (A. 200, 203)

(g) About January 10, 1968, after three weeks, Mr. Thompson asked plaintiff to prepare a "MICS" ^{3/} presentation to be ready on January 12, 1968. Plaintiff replied that he could not do so under the circumstances that he (plaintiff) had not with during November and December, 1967, as well as the circumstances prevailing prior thereto if they were to continue. Mr. Thompson would not discuss this with plaintiff. (A. 202, 203)

(h) Until January 24, 1968, plaintiff was not given an official Form 50 assigning plaintiff to Code 800. Until January 24, 1968, plaintiff was not given an official job description. (A. 203, 50)

(i) Plaintiff presented in conferences with Mr. Thompson his reasons for believing it was not possible for him to perform the assignment as follows:

"Well, let me put it this way: I have been with Federal Service for 15 years. I have been at Goddard since 1951 working with these particular people. I felt that as a senior staff person at the division level for all of these years, when the reorganization took place, if they had decided they wanted me to work in Code 800, that I should have been apprised of this early, not left sitting for six months without any contact, so that I could get a feel for what they would require when I went over there.

Now, I was not given an opportunity to have any feeling for what was happening to me." (A. 206)

3 / "MICS" stands for Management Information Control System

Plaintiff asked for a performance appraisal and an understanding of the job potential. (A. 203, CSC 146-167) Plaintiff asked specifically: "I want to know what the job, the growth potential of the job was, and what appraisal, where necessary, would inform me of those areas of weaknesses that may create the kinds of problems that obviously had developed before," (A. 206) and, further, that "since we had never been able to do this before it seems impossible to do the job under the circumstances that I had been working under the previous two years, and I declined on that basis. (A. 209) 4/

(j) Mr. Thompson refused to respond to plaintiff's pleas for understanding of whatever the problem was that existed, and told him, in fact, that he wasn't sure the new job description would sustain a grade GS-14 which was the grade of the plaintiff. In further response to plaintiff's request for a hearing, as stated above, Mr. Thompson told plaintiff, on the same day, January 21, 1968, that plaintiff was given an official assignment and a job description, that he was putting plaintiff on Leave Without Pay and that plaintiff must remove himself and his personal effects from the office.

Plaintiff remained on forced LWOP from January 26, 1968 until February 13, 1968 when plaintiff was given a notice of proposed removal for insubordination. After this date, except for a few days to prepare a reply, plaintiff remained on LWOP until his removal March 25, 1968. (A. 211, 211a-121).

4/

Further documentation is contained in plaintiff's Reply to Charges, Part IV, entitled "Brief Review of Incumbent's Assignment and Difficulties During the Period Between May 1967 - January 1968.

C. Specific Allegations of Violation of Statute and Regulations Pertaining to Official Assignments and Job Descriptions

8. The Notice of Proposed Removal, February 13, 1968 states that "this proposed action results from the following charge: Refusal to carry out official assigned job for the period January 11, 1968, through the date of this notice."

9. The Notice of Decision to Remove, March 23, 1968 (effective March 23, 1968) repeats that the charge is based upon "refusal to carry out officially assigned job for the period of January 11, 1968 through the date of this notice. (i.e. to February 13, 1968)

10. The decision of the Civil Service Examiner containing the following language with respect to the scope of the records for upholding the discharge: "On the basis of the above, it is found that Mr. Burton did, in fact, refuse to carry out his officially assigned job starting on January 11, 1968, as charged". (P. 7). The Examiner also quotes from a memorandum of Mr. Thompson, January 24, 1968: "It has now been two weeks since he had declined the assignment".

11. The Defendant violated its own and the Civil Service Commission requirements as to assignments or job descriptions during the period subsequent to January 11, 1968 as follows:

(a) Following the discussion between Mr. Thompson and plaintiff on January 11, 1968, relative to the preparation of certain data for use on January 13, 1968, Mr. Thompson called the personnel office. (A. 23, 24). Upon being advised that the personnel records did not contain either a job

description or an assignment officially effecting the transfer of plaintiff to Code 300 from the Division of Manned Flight Operations Division, the personnel department prepared an Assignment and a Job Description (CSC App. Ex. G) and the Assignment and the Job Description were discussed with plaintiff on January 13, 1968, and, at plaintiff's request to examine them, the documents were not officially presented to plaintiff until January 24, 1968 although the reorganization took place more than six months before that date. (A. 24-27)

(b) The Regulations of the Civil Service Commission require that the standard forms "must be used by appointing officers unless prior approval for a change is secured from the Commission". (Supplement 293-31, Book V, Table 4). The Commission cites as its authority for issuing the regulation the Civil Service Act of 1953. The Purpose of Notification is stated in FPM 293-3 by the Civil Service Commission to be:

"a. Purpose. The Commission requires the preparation of notifications of personnel actions primarily to provide basic documentation of a person's Federal employment, to notify the employee of the personnel action, and to provide basic records which will permit agencies and the Commission:

(1) To determine the status and rights of employees as well as their eligibilities for promotion, transfer, reemployment, and other personnel actions.

(2) To show whether personnel actions authorized or ordered have been effected, and whether actions effected have been authorized.

(3) To expedite the payment of retirement refunds and annuities to persons separated from the service."

(c) The Commission also explains the "Importance of Notifications":

" The notifications of personnel actions constitute the employee's official record of Federal employment. They are the basic source documents by which his rights and benefits under the laws and regulations pertaining to Federal service are determined. It is essential that personnel actions be reported correctly and documented to protect the interests of the employee and the Government. Accuracy in reporting also minimizes the costly and time-consuming operation of preparing notifications to correct, amend, or cancel previous personnel actions." (FPM 312-5, 2-3)

(d) A "Position Description" is defined as:

"A position in the Federal Government is a specific civilian office or employment consisting of all the duties and responsibilities currently assigned or delegated by competent authority and requiring full-time or part-time employment of one person." (FPM 312-5, 1-3)

(e) The primary objective of assignment to duties and responsibilities is stated in FPM 312-5 to be:

"a. Primary objective. The primary objective in assignment of duties and responsibilities to individual positions is to provide the basis for orderly, efficient, and economical accomplishment of the work of the organization. This objective requires striking an optimum balance among a number of conflicting factors. Management's desire for economy and productivity involves long term as well as short term considerations. Employees desire work that is stimulating and challenging, as well as continually rewarding, and which provides an opportunity for increasing their skills and advancing to higher level positions. Failure to provide a reasonable measure of such opportunities can result in high turnover, increased training costs, and lower efficiency. Thus, management is seeking a proper balance among the needs for economy, productivity, skills utilization, employee motivation." (2-1)

It is also required:

"A written record of the basic duties and responsibilities assigned to a position must be prepared before an employee can be hired or assigned. A well designed position has clearly defined operations, tasks, duties, authorities, and responsibilities, and provision for supervisory control and supervisory requirements. The written record should clearly

state what work is to be performed, how it is to be performed, what the consequences of errors are, and what specialized qualifications are needed to perform the duties. The official record of this information is usually called the position description. Its nature, preparation, and uses are discussed in subchapter 3 of this chapter." (2-3)

(f) The purposes and uses of position descriptions are stated by the Commission in FPM 312-9 as:

"b. Purpose and uses. Position descriptions are an essential feature of a modern personnel management system. They provide an official record of a decision by the responsible management official that certain work is to be performed by an employee or group of employees. Position descriptions have many important uses. For example, they are useful:

-For informing applicants or appointees about prospective duties and responsibilities.

* * * * *

-As a basic evidence in appeal cases."

(g) The Commission provides for distribution of position descriptions in FPM 312-10. e., as follows:

(1) Employee copy. An employee should be furnished a current, accurate copy of his position description.

(2) Position descriptions are required for all employees under the Classification Act, as amended, 5 U.S.C. 5101 et seq., and the Commission is authorized to prescribe regulations for the administration of the Act. 5 U.S.C. 5115.

(3) Prior to performing new duties it is required by NESA Regulations that:

" Employees are to be informed of their duties, work objectives and performance requirements at the time they report or change to new positions."
(NESA FPM Supp. 430-2-7(d))

Plaintiff was never assigned a duty under any operative assignment and job description which he was permitted to perform. Following the discussion between Mr. Thompson and plaintiff on January 11 re preparation of data for use on January 13th, no

other assignment was given to plaintiff. On January 24, 1968 when plaintiff was given an official Assignment and a Job Description but without any current specific assignment and upon plaintiff's continued insistence upon an assurance of adequate support and finding out what the problems were that had prevented him from receiving the support in the past necessary to perform "any duties", the plaintiff was placed on Leave Without Pay (LWOP). This status remained until February 13, 1968 when plaintiff was given a Notice of Intent to Remove him, whereupon he was placed back on pay status until February 23, 1968 to prepare an answer to the charges. At the time he was placed on LWOP he was told to take his possessions and leave. This was on January 24, 1968 and, thereafter, he was not requested to perform any duties.

D. Facts Showing Plaintiff's Efforts to Secure Redress of his Grievances.

2. On May 19, 1967 plaintiff sent through channels (i.e., through his Superior, Mr. Roberts) on up to Dr. Clark, who headed the Goddard Space Flight Center, a detailed statement explaining the history of his semi-isolation, lack of a position description, lack of assignment to duties commensurate with his training and past performance, lack of support to get the job done and lack of access to the head of the Division. A copy of this went to Personnel and to Mr. Thompson who was to be his future Chief. (Plaintiff's Reply to Charges, Part IV, Reference 1).

10. Plaintiff wrote to Mr. Covington, Director, on October 13, 1967 inquiring about his rumored assignment to

Code 800 and, specifically, asking for a conference on plaintiff's difficulties with management. (Plaintiff's Reply to Charges, Part IV, Reference 1).

11. Plaintiff raised again on January 11, 1968 the impossibility of performing any task without adequate support and an understanding of what treatment he could expect in the future. This was repeated January 19 and 24, 1968, and in other notes and conferences prior to discharge on March 20, 1968. Plaintiff, in a letter to Dr. Clark, Director of the Center, on March 20, 1968, specifically called his attention to Plaintiff's request to Mr. Thompson for a "discussion concerning past performance difficulties", and "discussion concerning the new assignment relative to establishing the authority and resources which would be required to carry out the task". Plaintiff, in the March 20, 1968 letter, stated the "central point at issue * * involves a request for a fair appraisal of my past performance and difficulties for the purpose of providing me with the necessary visibility to approach the future with some degree of confidence". This is followed by the statement that: "Every possible effort, on my part, has been made to communicate and resolve the issue with this Directorate and with the Personnel Office, but all attempts have been unsuccessful to date." At no time was there any reply to plaintiff's request for consideration of his grievance.

H. Facts Relating to Prejudice by Management
Toward Plaintiff

12. The defendant failed to issue a position description for the 18 months prior to March 1967.

13. The defendant did not provide support, authority, and backing for plaintiff's staff jobs.

14. Defendant Director kept plaintiff in virtual isolation after 1969 and complete isolation after May 1967.

15. Defendant Director did not inform plaintiff as to where he would fit into the reorganization that became effective July 1, 1967.

16. Defendant Director did not respond to plaintiff's pleas for understanding throughout the entire period of 1967 to date of firing in 1968.

17. The Defendant Director neglected to comply with agency instructions which required management to discuss with plaintiff his work performance and to give him guidance.

18. Defendant Director placed plaintiff on LEOP on January 24, 1968 knowing he was married, supporting his children, and that cutting off his income would seriously handicap him in preparing a defense or securing representation.

F. Facts Concerning the Duty Under Law to Consider
the Plaintiff's Reply

Section 7501(b)(4) of Title 5 U.S.C. requires that the agency issue a written Decision "on the answer" of the employee. Plaintiff raised fully and specifically the long history of isolation and harassment, his earlier grievances and lack of support and showed their relation to what happened

on January 1968, but the agency ignored this part of the answer and confined its decision only to events of January 1968. In doing so, the Defendant also violated its own Regulations which require specifically that "Dona fide consideration must be given to any reply received from an employee." (NASA 752-S-1 Supp. 41).

G. Facts Relating to the Regulations Which Prohibit Placing Employee on Leave without his Consent

19. The rules which governed LWOP in January 1968 at NASA provided for LWOP only at the request of the employee. (Appell. CSC Exh. 3 - GHI 3630.5 and FPM Chapt. 630, Sub. S-12).

20. Plaintiff did not request LWOP on January 24, 1968, or any other time.

21. Dr. John F. Clark, Director of Goddard Space Flight Center, in his decision on the agency appeal July 26, 1968, ruled that plaintiff should not have been placed on leave without pay.

H. Facts Regarding Regulations and Instructions of CSC and NASA requiring Exercising Reasonable Judgment

The regulations provide:

"FPM Chapter 751 - Discipline
Subchapter 1 - General Provisions
Subsection 1-1 - Agency Responsibility for Discipline
Paragraph c. - Compliance with job protection procedures

"Strict adherence to job protection procedures, whether required by the Commission's regulations or by the Agency's regulations, is an essential phase of the Agency's responsibility. In addition, any adverse action must be based on good cause, be consistent with other rules and policies issued by the Agency, and be fair and equitable."

Subsection 1-2 - Choosing Among Disciplinary Actions

Paragraph a. - General

"There are many situations which may call for corrective action and a wide variety of actions are available, ranging from a warning or reprimand to suspension, revocation of rank or demotion, or separation from the service. It is the responsibility of management in selecting a course of action."

Paragraph b. - Responsibility

"Any course of action demands the exercise of responsible judgment so that an employee will not be penalized out of proportion to the character of his offense; this is particularly true of so-called 'first offenses'. In such cases, the penalty should be levied only after a responsible determination that a less severe penalty, such as admonition or reprimand, is inadequate."

Paragraph c. - Like penalties for like offenses

"(1) In taking disciplinary actions, like penalties should be imposed for like offenses."

"(2) Agencies should give consideration to all factors involved when deciding what penalty is appropriate, including not only the gravity of the offense but such other matters as the existence of mitigating circumstances, the frequency of the offense, and whether the action accords with justice in the particular situation."

* * * * *

"As a guide to reasonableness, NASA Appendix A to Chapter 701, Subchapter 1, has been provided to insure that adequate consideration is given before a particular adverse action is chosen. A list of thirty-four offenses are shown with a suggested range of penalties for stated offense. Offense number twenty-two most nearly fits the charge in your letter of February 13, 1963, and is quoted here along with the associated range of penalties for several repetitions during a twenty-four month period."

"22. Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from immediate supervisor having responsibility for the work of the employee; insubordination."

<u>1st Offense</u> <u>Penalty</u>		<u>2nd Offense</u> <u>Penalty</u>		<u>3rd Offense</u> <u>Penalty</u>
<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	
Reprimand	Removal	15 days Suspension	Removal	Removal"
(See Plaintiff's "Answer to Charges, Part III).				

I. Facts Relating to Compliance With Agency and
CSC Regulations re Evaluation of Performance

Management Instruction, Goddard Space Flight

Center GMI 3333.2, Section 7, App. Ex. 3, provides:

"RELATIONSHIP OF SUPERVISOR'S PROMOTION RECOMMENDATIONS TO THE PERFORMANCE RATING ACT OF 1950."

In addition to supporting recommendations for promotions with qualitative information, supervisors are required to evaluate the performance of subordinates annually in accordance with the provisions of the Performance Rating Act of 1950. Supervisors are expected to discuss the results of this evaluation with employees prior to the formal annual notification received as of January 31 of each year."

* * * * *

NASA FPM Supplement 430-2-5 (?) provides:

"Discussions with employees. At the time performance ratings are assigned supervisors are to notify each employee of his rating; discuss his performance and rating with him, discuss any training which will improve performance and inform him of his rights to appeal the rating. In addition to the required discussion of performance ratings, supervisors are to have frequent, less formal discussions with their employees throughout the rating period as a part of their normal work planning and evaluation. It is at these times that supervisors are to make sure that their employees understand their duties and responsibilities and are fully aware of the work objectives and what is expected of them. These discussions are not to be regarded as a perfunctory obligation. They should be a genuine effort to increase employee effectiveness through improved communications and relations. When performance rating discussions are not feasible because of geographical location, supervisors should communicate to the employee in writing what they would have covered in an oral discussion."

DONALD M. MUTHA
1609 Tower Building
Washington, D.C. 20005

Attorney for Appellant

[Caption Omitted in Printing]

NOTION FOR SUMMARY JUDGMENT

Defendants through their attorney, the United States Attorney for the District of Columbia, respectfully move the Court to grant summary judgment for them on the ground that the pleadings and the certified copy of the administrative record before the Civil Service Commission in plaintiff's case which record is incorporated in and made a part of this motion show that there is a rational basis for the view of the Civil Service Commission that plaintiff was properly discharged and consequently defendants are entitled to judgment as a matter of law.

/s/
THOMAS A. HENNESSY
United States Attorney

/s/
JOSEPH H. HARRISON
Assistant United States Attorney

/s/
ELLEN LEE PARK
Assistant United States Attorney

[Certificate of Service Omitted in Printing]

. [Caption Omitted in Printing]

STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 9(h)

Plaintiff by this action seeks judicial review of his removal from federal employment. The only evidence properly before the Court is that which was before the Civil Service Commission and is contained in the certified copy of the record of the Commission which is filed

herein. On the basis of that record defendants summarize the material undisputed facts as follows:

1. Plaintiff is a veteran who served as an employee of the National Aeronautics and Space Administration (hereinafter referred to as NASA) for approximately twelve years ending in March, 1968.

2. On February 13, 1968 Henry F. Thompson, Deputy Assistant Director for Manned Flight Support, issued a notice of proposed removal to plaintiff on a charge of "Refusal to carry out official assigned job for the period January 11, 1968 through the date of this notice." Mr. Thompson stated the reasons for the proposed action specifically and in detail including the following:

"3. On January 24, 1968, a meeting was held in my office. In attendance were myself, Neil Stein, and you. At this meeting, you advised me that you would accept the assignment I gave you on December 6, 1967, only if all of the following criteria were met: a. A private office with outside exposure; b. A private secretary. c. An adequate telephone system. d. A periodic step increase. e. A promotion to GS-15, step 2, by June 1968.

"You were advised by me that your request for a private secretary and private office with outside exposure could not be met. In addition, a recommendation for promotion to a GS-15 could only be considered after I had personally reviewed your work over a period of time. You were further advised that a periodic step increase would be reviewed at the appropriate time and a decision to grant or not to grant would be made then. I also advised you that I would investigate the telephone situation to determine if any changes were necessary. You were once again asked if you intended to accept the assignment you were given on December 6, 1967. You answered in the negative indicating that you would only accept the assignment if all the five criteria were met; you also indicated that you would not accept any other assignment at the Goddard Space Flight Center unless these five criteria were met.***

"In view of your refusal to accept and perform the assigned work, I have no alternative but to propose your removal from the Federal Service."

3. Plaintiff was informed that he had fifteen days from receipt of the notice within which to reply in person and/or in writing and to submit affidavits. Plaintiff submitted a written reply dated February 28, 1968 with attachments and replied orally to Mr. Thompson.

4. Mr. Thompson on March 26, 1968 rendered a decision stating that after giving careful consideration to the reply and attachments and to the oral replies he found the charge supported by the evidence and that plaintiff would be removed from his position effective March 29, 1968. Mr. Thompson advised plaintiff of his appeal rights and plaintiff appealed initially to the Director of the Goddard Space Flight Center who subsequent to a hearing on May 14, 1968 sustained the removal action. Plaintiff then appealed to the Civil Service Commission.

5. Plaintiff's removal was sustained by the Civil Service Commission which found that NASA had complied with all procedural requirements in connection with plaintiff's removal; that plaintiff failed to carry out his officially assigned job starting on January 11, 1968, as charged, and that the mitigating factors alleged by plaintiff were insufficient to outweigh the seriousness of the sustained charge.

6. The Civil Service Commission rendered a final decision on June 27, 1969 and plaintiff instituted this action in August, 1969.

/s/
THOMAS A. FLANNERY
United States Attorney

/s/
JOSEPH D. HAMMON
Assistant United States Attorney

/s/
ELLEN LEE PARK
Assistant United States Attorney

[Caption Omitted in Printing]

ORDER

This cause having come before the Court on plaintiff's motion for summary judgment and defendants' motion for summary judgment, and upon consideration thereof and of argument of counsel, it is by the Court this 26th day of May, 1970,

ORDERED that plaintiff's motion for summary judgment be denied, and it is further

ORDERED that defendants' motion for summary judgment be granted and that the above entitled cause be and it hereby is dismissed.

George L. Hart, Jr.
UNITED STATES DISTRICT JUDGE

P R O C E E D I N G S

THE COURT: Plaintiff's Motion for Summary Judgment is denied; defendant's Motion for Summary Judgment is granted.

There is no issue of material facts.

* * * * *

R E P O R T E R ' S C E R T I C A T E

I, Patrine N. Brockmeyer, do hereby certify that the foregoing constitutes an excerpt of the official transcript in the above-styled matter.


Patriine N. Brockmeyer

[Caption Omitted in Printing]

N O T I C E O F A P P E A L

Notice is hereby given that Plaintiff hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the judgment entered in this action on May 26, 1970.

Dated this 21 day of July, 1970.

DONALD R. THORNTON
1009 Tower Building
Washington, D.C. 20005

Attorney for Plaintiff



The following is answer to letter of removal:
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
GREENBELT, MARYLAND 20771

February 28, 1968

Mr. Henry F. Thompson
11539 Caden Road
Rockville Maryland 20852

Subject: Reply to Notice of Proposed Removal in
Your Letter, dated February 13, 1968

Dear Mr. Thompson:

This letter, when attached to the enclosure, entitled "Reply to Notice of Proposed Removal," constitutes my complete written reply to your letter of February 13, 1968.

The enclosure has been divided into four separate parts, each representing an independent objective as follows:

PART I

Discussion of subject proposal for the purpose of correcting pertinent statements purported to support the charge and to present certain regulations which should be of mutual interest.

PART II

Present evidence which would seem to indicate that your letter of February 13, 1968 not only proposes adverse action, but in fact substantiates consummated adverse action already instantaneously initiated on January 24, 1968 in the form of forced Leave Without Pay; which is tantamount to Suspension.

PART III

Present evidence which would seem to indicate that the proposed adverse action as delineated in your letter of February 13, 1968 has, in some instances, either violated the intent of Civil Service Regulations as defined in the Federal Personnel Manual, or at the very least represents proposed utilization of these regulations in an extreme manner.

PART IV

Present a brief review of incumbent's assignments and difficulties during the period May 1967 - February 1968 with special emphasis on the November 1967 -

February 1968 segment. Furthermore, to show that this review constitutes mitigating circumstances that have, until now, been refused a proper hearing by all levels of management at this Center.

Supporting documents and/or quotations are provided as needed in each part so, that in essence, each part can be considered as standing alone in support of the defined objective.

Every effort has been made to limit Part IV to coverage of a minimum time span as considered necessary and appropriate for this reply, however, it should not be construed, and is not meant, to be a complete and final discourse should the proposed adverse action defined in your letter of February 13, 1968 become an actuality.

Further, it should be noted that the entire enclosure presents only fact and sincere feeling in all areas under discussion and no attempt has been made to edit these feelings. This, of course, always leaves the entire set of objectives open to question, because all points of controversy have been left intact.

The purpose in utilizing this approach is not to develop meaningless obscurity, but rather to present accurate information and questionable conditions which would warrant further discussion, and resolution; as opposed to adverse action.

Therefore, I specifically request that I be allowed to make an oral presentation in which I shall be happy to answer any questions that you may have and, in addition,

make every effort to assist you in bringing more appropriate management techniques back into focus.

Respectfully,

Walter G. Burton, Jr.
Manned Flight Support
Directorate

Encl:

Reply to Notice of Proposed Removal

Copy Furnished:

Mr. Raymond J. Sumser
Chief, Manpower Utilization
Division

[From Part C, Appeal File 2, Civil Service Commission,
pages 9 et seq.]

"REPLY TO NOTICE OF PROPOSED REMOVAL"

PART I - Pertinent Errors Noted in Notice of Proposed Removal, dated February 13, 1968 and Applicable Civil Service Regulations

PART II - Evidence which would seem to indicate that your letter of February 13, 1968, not only proposes adverse action, but in fact substantiates consummated adverse action instantaneously initiated on January 19, 1968, in the form of leave without pay; which is tantamount to suspension

PART III - Evidence which would seem to indicate that the proposed adverse action as delineated in your letter of February 13, 1968, has, in some instances, either violated the intent of Civil Service Regulations as defined in the Federal Personnel Manual, or at the very least represents utilization of these regulations in an extreme

PART IV - Brief review of incumbent's assignments and difficulties during the period between May 1967 and January 1968 with special emphasis on the November 1967 - February 1968 segment

PART I - Pertinent Errors Noted in Notice of Proposed Removal, dated February 13, 1968 and Applicable Civil Service Regulations

- REFERENCES:
- (1) Letter, dated February 13, 1968, to Mr. Walter G. Burton, Jr., from Mr. Henry F. Thompson, Subject: Notice of Proposed Removal
 - (2) Memorandum, dated January 31, 1968, to Mr. Henry F. Thompson, from Mr. Walter G. Burton, Jr., Subject: Meeting Concerning Acceptance of Job Assignment as Presented to Writer on January 19, 1968
 - (3) Memorandum to Record, dated January 24, 1968, written by Mr. Henry F. Thompson, Copy to Mr. Walter G. Burton, Jr.
 - (4) Quotations from Federal Personnel Manual as Applicable

The following are some errors set forth as applicable to Reference (1), but are not necessarily all inclusive:

1. Page 1. Paragraph 1

The charge should read January 10, 1968, instead of January 11, 1968.

2. Page 1. Item 1, 2nd Sentence and all sentences referring to December 6, 1967

The assignment was received at 10:00 AM on the morning of Wednesday, November 22, 1967, instead of December 6, 1967, as stated. Clarification on this point is given in Part IV of this document.

3. Page 2, Item 2, Last Sentence

On January 19, 1968, at referenced meeting, I was given a Form 50 reassigning me to Code 800 and a position description. At this time, I was asked if I would accept the assignment. My reply was that I would like some time to look the assignment over, after which I would like to discuss it before giving a final answer. When asked by Mr. Thompson how much time would be required, I replied anywhere from one or two hours to a week, but that I would be willing to discuss the matter with him whenever it could be fitted into his schedule. Mr. Thompson then consulted his calendar and said that he could not meet with me until January 24, 1968, at 9:00 AM.

The point is, I never requested five days to study the position description prior to giving a final decision. I did, however, request a reasonable amount of time to look the assignment over in order to be able to ask some sensible questions. Part IV is intended to shed some light on this area also.

4. Page 2, Item 3, Paragraphs 1 & 2

The assertions made here in support of the charge, are both incomplete and inaccurate and for the purposes of correction and clarification, Reference (2) is appended to reflect the actual facts.

5. Page 2, Item 3, Paragraph 3

Your assumption that I wished to be put in a nonpay status is erroneous and completely unfounded. As a matter of fact, according to Civil Service Regulations, Leave Without Pay (LWOP) is what one may call a fringe benefit, which can only be used by an employee when he requests the privilege in writing, and then

only after management consideration and approval. LWOP should never be forced as a penalty or as a disciplinary tool, since its use in this manner not only violates the intention of the regulation as set forth in Chapter 530, Subchapter S12 of the Federal Personnel Manual (FPM), but also constitutes an adverse action taken without prior notice. Part II is designed to deal with this point in detail.

6. Page 3, Item 4, Paragraph 1

This paragraph in reality amounts to nothing more than an ordered amount of subterfuge either thrown in without thought, or for the purpose of arousing my indignation. I prefer to concentrate on neither and will, therefore, confine myself to what I feel are more important areas of concern. Reference (3) is attached to this part, however, and suitable treatment will be rendered this paragraph in an oral discussion as required.

In light of the numerous errors or flaws set forth thus far in your proposal, dated February 13, 1968, to remove me from Federal Service, I submit the following quote for your information:

Chapter 752, Federal Personnel Manual, Paragraph 2-2(c)4

"Furthermore, if a flaw is detected in the notice, whether as a result of a request for further explanation or otherwise, the faulty notice should be canceled and a new notice issued."



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
GREENBELT, MARYLAND 20771

February 13, 1968

Mr. Walter G. Burton, Jr.
5902 - 85th Avenue
Hyattsville, Maryland 20784

Dear Mr. Burton:

Subject: Notice of Proposed Removal

This is to advise you that as previously discussed during our meeting of January 24, 1968, it is proposed to remove you from your position of AST, Technical Management, GS-14, \$17,425 per annum, in the Office of the Assistant Director for Manned Flight Support, not earlier than thirty (30) days from the date of your receipt of

this letter of notice. This proposed action results from the following charge:

Refusal to carry out official assigned job for the period January 11, 1968, through the date of this notice.

The reasons supporting this charge are as follows:

1. On November 17, 1967, you were detailed to the Office of the Assistant Director for Manned Flight Support. On December 6, 1967, you were given the assignment of developing a system of Management and Information Control for the Manned Flight Support Directorate. This required that you provide the necessary engineering management data in the following three areas: financial, personnel, and facilities. On January 10, 1968, you indicated to me that you would no longer perform the assignment of developing a system of Management and Information Control for the Manned Flight Support Directorate.

2. On January 14, 1968, you were officially reassigned to the Office of the Assistant Director for Manned Flight Support. On January 19, 1968, a meeting was held in my office. In attendance at this meeting were myself, Neil Stein of the Manpower Utilization Division, and you. The purpose of this meeting was to discuss your refusal to carry out the assignment given to you by me on December 6, 1967. At this meeting, you were given a copy of your reassignment Form 50 and a current position description. You were also asked if you intended to do the job assigned to you on December 6, 1967. You indicated that you did not intend to do the December 6, 1967, assignment; however, you requested and were granted five days to study the position description and render a final decision.

3. On January 24, 1968, a meeting was held in my office. In attendance were myself, Neil Stein, and you. At this meeting, you advised me that you would accept the assignment I gave you on December 6, 1967, only if all of the following five criteria were met:

- a. A private office with outside exposure.
- b. A private secretary.
- c. An adequate telephone system.
- d. A periodic step increase.
- e. A promotion to GS-15, step 2, by June 1968.

You were advised by me that your request for a private secretary and private office with outside exposure could not be met. In addition, a recommendation for promotion to a GS-15 could only be considered after I had personally reviewed your work over a period of time. You were further advised that a periodic step increase would be reviewed at the appropriate time and a decision to grant or not

to grant would be made then. I also advised you that I would investigate the telephone situation to determine if any changes were necessary. You were once again asked if you intended to accept the assignment you were given on December 6, 1967. You answered in the negative indicating that you would only accept the assignment if all the five criteria were met; you also indicated that you would not accept any other assignment at the Goddard Space Flight Center unless these five criteria were met.

Your refusal to accept the December 6, 1967, assignment and the fact that you were not performing any other duties officially assigned by me left me no choice but to assume that you wished to be put in a non-pay status. Thus, I advised you that at close of business on January 24, 1968, you would be placed in a "Leave Without Pay Status." You have been in this status since that date.

4. In spite of being put on Leave Without Pay, you continued to come to the office. On January 25, 1968, you were observed reading magazines at your desk. In order to determine why you were reporting to the office, yet not performing tasks I had assigned to you, a meeting was held in my office on January 26, 1968. In attendance were myself, Neil Stein, and you. At this meeting, you were asked if your coming to the office implied that you were accepting the December 6, 1967, assignment. You indicated that it did not and your purpose in coming in was to continue doing the same thing you had been doing for the last seven years. You were also asked at this meeting to read and acknowledge a memorandum which summarized the previous meeting of January 24, 1968. After reading the memorandum, you acknowledged its validity but refused to acknowledge same by signing. When asked once again if you intended to accept the December 6, 1967, assignment, you replied in the negative.

In view of your continued refusal to do the assigned work and your failure to justify your presence at Goddard and in view of the fact that you were in a "Leave Without Pay Status," you were advised by me that it was not necessary for you to physically report to the office until such time as you either accepted the December 6, 1967, assignment or until your presence was requested by me. You indicated that you would continue to report to the office.

In view of your refusal to accept and perform the assigned work, I have no alternative but to propose your removal from the Federal service.

You have the right to reply both personally and in writing to me and also to submit affidavits in support of your answer. Your reply must be submitted within fifteen (15) days from your receipt of this letter. Consideration will be given to extending this period of time if you submit a request stating your reasons for desiring more time. Full consideration will be given to any answer you submit.

If you do not understand the reasons for your proposed removal, I suggest you contact Mr. Gary R. Purvis, Placement Branch, Manpower Utilization Division, Building 16, Room 125, extension 5036 for further information.

During this advance notice period, you will be retained in an active duty status pending final decision of the proposed removal. For pay purposes, you will be carried in a leave without pay status. However, you will be paid for any time spent preparing your reply to this proposal or performing the assignment given you on December 6, 1967.

As soon as possible after your answer is received or after expiration of the fifteen (15) day limit, if you do not answer, a written decision will be issued to you.

Sincerely,

Henry F. Thompson
Henry F. Thompson
Deputy Assistant Director
for Manned Flight Support

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Henry F. Thompson, Deputy Assistant Director for Manned Flight Support DATE: January 31, 1968

FROM : Mr. Walter G. Burton, Jr.
Manned Flight Support Directorate

SUBJECT: Meeting Concerning Acceptance of Job Assignment as Presented to Writer on January 19, 1968

1.0 PURPOSE

- 1.1 Subject memorandum was prepared at the express wish of the prime recipient.

2.0 GENERAL SUMMARY

- 2.1 A meeting was held in Mr. Thompson's office (Bldg. 23, Room S-201) at 0900, January 24, 1968, to discuss a job assignment given the writer on January 19, 1968.
- 2.2 Participants were Mr. H. F. Thompson, Mr. W. G. Burton, Jr., and Mr. Neil A. Stein of the Placement Branch - Manpower Utilization Division.

- 2.3 The meeting was conducted in an orderly and efficient manner and within forty-five (45) minutes the general conclusion was reached that Mr. Walter G. Burton, Jr., would be put on leave without pay effective at close of business January 24, 1968.
- 2.4 Furthermore, it was stated that Mr. Thompson would have to take some official action; however, it was not made clear just what official action would be taken.
- 2.5 Of paramount importance, though not discussed, was an area known as employees' rights. This, one would presume, will be a matter for later discussion.

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Writer on January 19, 1968

3.0 PROCEEDINGS

3.1 Comments by Mr. Burton

- 3.1.1 A good portion of man's satisfaction in life is derived from productive work. This is by necessity not necessarily by choice.
- 3.1.2 Ordinarily man becomes a more efficient productive entity when performing under some reasonable amount of pressure. While this is true in general, there is a level of pressure or tension for each individual beyond which productivity of the particular human organism will decline or fall off.
- 3.1.3 Once this stress level is reached, whereby production declines, any further increase sustained over a long period of time can cause what one should consider dangerous working conditions.
- 3.1.4 Dangerous or hazardous working conditions were defined from two points of view as follows:
 - 3.1.4.1 When the explicit environment is such that permanent physical harm is always imminent i.e., when heavy equipment operators are working in close quarters with other workers who are also crowded into the same area where heavy equipment operations are taking place. In this case stress is induced by fear of physical harm, but physical harm is more likely than permanent damage due to stress since acclimation usually takes place.
 - 3.1.4.2 When the explicit environment is such that permanent psychological harm is possible due to prolonged and excessive stress application to the worker. Simple examples include conditions where the worker's best efforts are negated by physical blockage, improper or futile

communications, lack of clear or timely direction, lack of response to best effort in some form either positive or negative, and undue ambiguity in information necessary to perform, etc., etc., etc.

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- 3.1.5 It was also pointed out that today one's level of education and ability to produce has been raised to a point where his basic needs have shifted somewhat in priority. That is to say, one no longer necessarily considers money and security as the first and foremost requirements for productive work. Rather, a whole new set of needs exist and usually take priority if productive work is to be efficiently accomplished.
- 3.1.6 These new needs are expressed in terms of self-esteem, belonging, achievement, and recognition.
- 3.1.7 Without the basic needs of self the worker deteriorates and over a period of time may become sporadically incapacitated due to fear, anxiety, and frustration even though he has the basic food, shelter, and security afforded by monies earned.
- 3.1.8 Regarding my own productivity while at GSFC, an objective appraisal indicated that the rewards were not proportional to effort expended, whereas punishment far exceeded that which may or may not have been warranted. In this connection analysis also indicates that the prolonged stress engendered by the explicit environment provided for me at GSFC has not, at this point, caused any permanent organic or psychological damage; nor is it my intention to allow such to happen.
- 3.1.9 Insofar as the work assignment or job description was concerned, it was stated that while the actual wording mattered little, because of the way it was used relative to a given assignment, the use of such terms as personal responsibility were meaningless since man is primarily responsible for his actions only when faced with situations over which he has absolutely no control.

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- 3.1.10 In answer to the question, "Do you accept the job assignment?" the following requirements for acceptance were stated:
 - 3.1.10.1 A private office must be provided on the periphery of the building where some degree

of quietness and outside visibility are available.

- 3.1.10.2 A secretary must be provided in close proximity who would take direction from the writer first and everyone else second.
- 3.1.10.3 Proper telephone service must be provided so that one is not desk-bound in order to receive incoming calls. On this point, it was stated that such a condition, in and of itself, caused undue stress and waste of manpower when a productive worker was constrained in this manner.
- 3.1.10.4 That my in-grade salary increase become effective as soon as the two-year period expires, i.e., by the end of February 1968.
- 3.1.10.5 That I be recommended and promoted to the proper GS-15 level, effective no later than 30 June 1968.
- 3.1.10.6 That conditions be provided whereby a reasonable and proper relationship could be developed between the writer, his supervisor, and other working elements of the Directorate.

3.2 Comments by Mr. Thompson

- 3.2.1 That the requirements were unreasonable, in that he had no power to effect them, since a promotion had to be approved by top Center Management.
- 3.2.2 That my office was comparable to that provided for other similar workers.

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- 3.2.3 That no secretarial service could be provided other than that which was currently available.
- 3.2.4 That he was not familiar with the existing telephone arrangements.

3.3 Comment by Mr. Stein

- 3.3.1 Questioned whether I had ever been told that I would not receive an in-grade salary increase.
- 3.3.2 Response was in the negative.

3.4 Comments by Mr. Burton

- 3.4.1 That he was informed by both the Directorate Administrative Officer and Mr. Thompson that the office arrangements and working conditions would be changed in March of 1968. The changes sought were those stated in paragraph 3.1.10.

- 3.4.2 Agreed with Mr. Thompson that certainly he could not guarantee a promotion, however, it was pointed out that he could and should provide a performance appraisal, as requested, and in so doing he could then point out any deficiencies that would prohibit promotion.

3.5 Comments by Mr. Thompson

- 3.5.1 That he lacked sufficient information as to my performance or capabilities to do as I suggest.
- 3.5.2 That he wasn't sure the job description would even support a GS-14 position.

3.6 Comments by Mr. Burton

- 3.6.1 That such information was available from many sources at his command and that as an assist I would provide a package of material to aid him in his evaluation.

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- 3.6.2 That, furthermore, I felt an appraisal was already available and to such a degree that a figure of merit was readily obtainable.

3.7 Comment by Mr. Thompson

- 3.7.1 That my requests were unreasonable and what I should do is take the job assignment and put everything I had into it so that he could see for himself.

3.8 Comments by Mr. Burton

- 3.8.1 That I had already done on previous occasions as he suggested, provided him with what I considered exemplary performances while subjected to environmental conditions which were both intolerable and near impossible to perform under.
- 3.8.2 That Mr. Thompson should not feel discriminated against because the conditions for job acceptance were applicable to any other job offer, since I felt that I had earned the right to make such requests.

4.0 RESULTS (Statements or Questions As Noted)

- 4.1.1 At this point Mr. Thompson simply stated that if I did not accept the job and begin work immediately he would be compelled to put me on leave without pay which meant

that I could not avail myself of either sick or annual leave.

- 4.1.2 That I should dictate my non-acceptance to one of the secretaries.

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4.2 Mr. Burton

- 4.2.1 Declined to dictate anything, but indicated that he would take all the time necessary to think first and prepare the statement only after sufficient thought process had been completed and state of anxiety and frustration had waned.

- 4.2.2 Requested specifically how much time with pay was being provided for his statement, since he was not inclined to work on his own time.

4.3 Mr. Thompson

- 4.3.1 Stated that today only (January 24, 1968) would be provided and that at close of business I would be on leave without pay (LWOP) since both he and Mr. Stein concurred that a simple yes or no answer was all that was necessary.

4.4 Mr. Burton

- 4.4.1 Indicated that their advice made it simple, but since management had created the problem and had failed to solve it, a little more effort on his part seemed in order.

4.5 Mr. Stein

- 4.5.1 Queried as to whether I realized that Mr. Thompson was obliged to take some official action to support his decision to put me on LWOP.

4.6 Mr. Burton

- 4.6.1 Responded that we all do what we have to.

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4.7 Mr. Thompson

- 4.7.1 Commented that he had not been exposed to psychology during his early training.

4.8 Mr. Burton

4.8.1 Responded that neither had he but that he was glad of it, since he preferred a technical base from which to extend his knowledge.

5.0 CONCLUSIONS

5.1 General

5.1.1 The meeting ended as cordially as it had started and emotion was not displayed by any participant throughout, however, as in most cases where emotions are subdued or completely masked in a group meeting, productive decisions, which are to be expected, are rarely forthcoming.

5.1.2 I do not consider the results of the meeting to be productive as regards the ends which should have been desired.

5.1.3 If however, this document and subsequent non-productive confrontations are the products sought then perhaps the meeting could be termed a success.

5.2 Specific

5.2.1 There are only a few specific and significant conclusions that I wish to draw from this experience at this time. They are as follows:

5.2.1.1 A time comes in every man's life when he should lean back, make an objective review of what he feels he has accomplished to date, acquire a similar appraisal from others who are qualified to provide same, and then, after careful study, determine whether or not a change of course is in order.

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5.2.1.2 This overall analysis should be made, no matter how difficult the task.

5.2.1.3 It should be noted that the writer is doing just as he is suggesting when he refuses any further work assignments until such time as a complete performance appraisal has

been rendered him for objective comparison with his own.

5.2.1.4 Man is only as good as he thinks he is, at least until proven otherwise.

Walter G. Burton

800:WGB:df

cc: Mr. O. M. Covington
Dr. M. J. Vaccaro
Dr. J. F. Clark
Mr. R. J. Sumser
Mr. N. A. Stein

R E C O R D

January 24, 1968

Deputy Assistant Director for Manned Flight Support

Mr. Walter G. Burton

Mr. Neil Stein and Mr. Henry F. Thompson had a meeting with Mr. Walter G. Burton on Wednesday, January 24, at 9:00 a.m. for the purpose of determining Mr. Burton's decision on whether or not he would accept the assignment to the Manned Flight Support Directorate.

Mr. Burton gave us his philosophy on work and very clearly indicated that he felt that he had made a substantial contribution in the past. He further stated that he felt that he was underpaid and that he was being asked to work in an environment which degraded him personally and made it impossible for him to perform a job. He was carefully questioned as to what the environment was that was giving him difficulty. He discussed four specific items which he said must be rectified to his satisfaction before he would accept the assignment, or for that matter any assignment within Goddard. These four criteria were:

1. An office with an outside exposure and a private secretary.
2. A telephone system which would assure him complete coverage to his satisfaction.
3. An ingrade promotion which normally would be due within a month or two based on time in grade.
4. A promotion to GS-15, Step 2, by June of 1968.

When questioned about what he believed to be the justification for these demands, he stated that he was not prepared to give us any information at this time, but that he clearly had performed for Goddard all that was necessary to rate this level of pay and personal accommodations.

In discussing the job that he had done in December on the Management Information Control System (MICS), he indicated that he believed that he had done a superior job under extremely difficult conditions. It was pointed out to Mr. Burton that this had been a first cut presentation and that the information which he required had been provided, although not necessarily in the manner in which he would have liked it to be provided.

Subject: Mr. Walter G. Burton

Mr. Thompson told Mr. Burton that he felt that he was being given personal accommodations equivalent to the other people in the Center and that his demands could not be met. Mr. Burton was informed that any recommendation would have to be based upon performance in his assigned job. The question as to Mr. Burton's willingness to accept and perform the assignment was asked several times, and in each case he said that he would not perform the assignment unless his demands were met; and furthermore, he would not accept any other assignment at Goddard unless these demands were met. Mr. Thompson explained to Mr. Burton that this was a job that had to be performed and that it was the one to which Mr. Burton had been assigned and his refusal to perform the work left Mr. Thompson no alternative but to place him on leave without pay.

Mr. Burton was requested to commit his position in writing. Mr. Burton asked whether he would be paid for the time that he spent in writing his position. When asked for an estimate of how long it would require for the preparation of his position, he stated that he did not know but that he would not do it while under mental stress, pressure and frustration.

Since Mr. Burton clearly had given considerable thought to his position and since it has now been two weeks since he had declined the assignment, it was felt that he should be able to commit his thoughts to paper by close of business today, January 24. Therefore, he was informed that he would be placed on leave without pay beginning January 25.

Mr. Burton was advised by Mr. Stein that Mr. Thompson would be forced to take additional action such as removal if the situation was not corrected, i.e., he accept the assignment. Mr. Burton acknowledged this fact.

Henry P. Thompson

800:HFT:ML

I have read the above memorandum and agree that it is a true statement of what was discussed at my meeting with Mr. Stein and Mr. Thompson on Wednesday, January 24, 1968.

Signed _____

Walter G. Burton

PART II - Evidence which would seem to indicate that your letter of February 13, 1968, not only proposes adverse action, but in fact substantiates consummated adverse action instantaneously initiated on January 24, 1968, in the form of Forced Leave Without Pay; which is tantamount to suspension.

- REFERENCES: (1) Discussions with Mr. Raymond J. Sumser, Chief, Manpower Utilization Division, Mr. Gary R. Purvis, Chief, Placement Branch, and Mr. Neil A. Stein, Placement Branch
- (2) Goddard Management Instruction - GMI 3630.5 - Quotations as noted in this section
- (3) Federal Personnel Manual (FPM) - Quotations as noted in this section

On January 24, 1968, January 26, 1968, February 2, 1968, February 6, 1968, February 13, 1968, February 19, 1968, discussions were held separately with Messrs. Neil A. Stein, Raymond J. Sumser, and Gary R. Purvis of the Manpower Utilization Division as to the propriety and legality of placing an employee on Leave Without Pay (LWOP) against his will.

In every discussion the writer was assured that this type of action was proper and could be initiated under Civil Service Regulations, however, when questioned as to what regulation or regulations were applicable, whether precedence had been set at this center, or in fact anywhere in the Federal Service, the answers contributed were as follows:

1. All agreed that they were not cognizant of any regulation that set forth such action as right and proper.
2. Messrs. Sumser and Purvis felt sure that somewhere in the Federal System such action had been initiated and sustained.
3. Mr. Purvis confirmed that no such action had ever been previously taken by the Goddard Space Flight Center against one of its employees and that perhaps this case would be precedence setting.

By my very nature, I have a low tolerance for the status quo and usually enjoy being a part of productive precedential efforts, but I submit that this one is a little too rich for my blood. Therefore, I have been compelled to research this particular area of managerial activity and set forth the following information to support the stated objective:

Goddard Management Instruction - GMI 3630.5Title: Leave Without Pay1. Purpose

"To establish policy and procedures for administration of Leave Without Pay. The purpose of Leave Without Pay is to provide for retention on the payroll of desirable employees whose retention after absence from duty without pay at their request is determined to be in the best interest of the Government."

5. Procedure

"a. Request for Leave Without Pay for 30 days or less shall be submitted in memorandum form to the division chief who will forward the approved memorandum to the Manpower Utilization Division for inclusion in the employee's personnel file.

"b. Supervisors will submit request for extended Leave Without Pay (in excess of 30 days) on Standard Form 52, Request for Personnel Action, with the employees signed statement, indicating in the Remarks Section, the reason for the request, the dates involved, and the expected benefits."

Federal Personnel Manual - FPM
Chapter 630 - Absence and Leave
Subchapter S12 - Leave Without Pay

Subsection S12-1 - Definition

"Leave Without Pay is a temporary non-pay status and absence from duty granted upon the employee's request."

Subsection S12-2 - Granting Leave Without Pay
b. (2) See sentence

"The standards described below are not intended to cover suspension and furlough, since suspension and furlough are separate and distinct from Leave Without Pay."

Federal Personnel Manual
Chapter 751 - Discipline
Subchapter 2 - Specific Disciplinary Situations

Subsection 2-5 - Suspension Pending Investigation or Action

"b. Pending separation or other adverse action.

"It may on occasion be necessary to suspend an employee during the advanced notice period of a proposed separation. The suspension and the separation may be based on the same set of facts, or there may be separate and distinct causes for each action. In either case, there are two separate and distinct actions, and each is subject to the procedure described in Chapter 752. The agency may initiate the two actions by issuing one notice proposing both, or it may issue a notice of proposed suspension and a separate notice of proposed separation.

"If one notice is made to serve, it must be procedurally correct for each action.

"When notices are combined it must be made clear to the employee that he has a right to reply to each of the separate proceedings."

Federal Personnel Manual
Chapter 752 - Adverse Action by Agencies
Subchapter 2

Paragraph 2-4 - Duty Status

"a. General

"Except as provided in Paragraph 2-4b of this subchapter, an employee against whom adverse action is proposed must be retained in an active duty status during the notice period. When, however, circumstances are such that the retention of an employee in active duty status in his position may result in damage to Government property or may be detrimental to the interest of the Government or injurious to the employee, his fellow workers, or the general public, the employee may be temporarily assigned to duties in which these conditions will not exist or he may be put on annual leave with his consent.

"b. Suspensions during notice period.

"(1) In an emergency case when, because of the circumstances described in Paragraph 2-4(2) of this subchapter, the employee cannot be kept in an active duty status during the suspension period, he may be suspended. This suspension is a separate adverse action."

Summation

In the absence of any additional information to the contrary, I conclude that the adverse action defined as Suspension has been effected against me as of January 24, 1968; without prior or proper

nation, without following the established procedures as defined by the Federal Personnel Manual for such action and in violation of the intent of Civil Service Regulations, is not the regulations themselves.

PART III - Evidence which would seem to indicate that the proposed adverse action as delineated in your letter of February 13, 1968, has, in some instances, either violated the intent of Civil Service Regulations as defined in the Federal Personnel Manual, or at the very least represents utilization of these regulations in an extreme

REFERENCE: Federal Personnel Manual (FPM)

FPM Chapter 751 - Discipline

Subchapter 1 - General Provisions

Subsection 1-1 - Agency Responsibility for Discipline

Paragraph c. - Compliance with job protection procedures

"Strict adherence to job protection procedures, whether required by the Government's regulations or by the Agency's regulations, is an essential phase of the Agency's discipline. In addition, for adverse action to be considered as such, it must be consistent with civil service regulations and the Agency's regulations and be fair and equitable."

Subsection 1-2 - Choosing Among Disciplinary Actions

Paragraph a. - General

"There are many situations which may call for corrective action and a wide variety of actions are available, ranging from a warning or reprimand to suspension, reduction in rank or compensation, or separation from the service. There is no substitute for judgment in selecting among these."

Paragraph b. - Reasonableness

"Any adverse action demands the exercise of responsible judgment so that an employee will not be penalized out of proportion to the character of the offense; this is particularly true of an employee who has a previous record of completely satisfactory service. An adverse action such as suspension should be ordered only after a responsible determination that a less severe penalty, such as admonition or reprimand, is inadequate."

Paragraph c. - Like penalties for Like Offenses

"(1) In taking disciplinary actions, like penalties should be imposed for like offenses.

"(2) Agencies should give consideration to all factors involved when deciding what penalty is appropriate, including not only the gravity of the offense but such other matters as the existence of mitigating circumstances, the frequency of the offense, and whether the action accords with justice in the particular situation."

FPM Chapter 751 - Discipline

Subchapter 2 - Specific Disciplinary Situations

Subsection 2-2 - Delinquency and Misconduct

Paragraph a. - Situations covered

"There is a wide variety of situations which fall under the general heading of delinquency or misconduct. Some examples are insubordination and disobedience of instructions Some situations result from employment relationship others could constitute misconduct whether on or off the job."

As a guide to reasonableness, NASA Appendix A to Chapter 751, Subchapter 1, has been provided to insure that adequate consideration is given before a particular adverse action is chosen. A list of thirty-four offenses are shown with a suggested range of penalties for stated offense. Offense number twenty-two most nearly fits the charge in your letter of February 13, 1968, and is quoted here along with the associated range of penalties for several repetitions during a twenty-four month period.

"22. Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from immediate supervisor having responsibility for the work of the employee; insubordination.

<u>1st Offense</u>		<u>2nd Offense</u>		<u>3rd Offense</u>
Penalty		Penalty		Penalty
<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	
Reprimand	Removal	15 days Suspension	Removal	Removal"

Summation

In any case, the maximum penalty is proposed, suspension has been effected under questionable conditions as stated in Part II, and in light of Part IV, your action both taken and proposed appear to be not only unreasonable, but extreme and unwarranted.

PART IV - Brief review of incumbent's assignments and difficulties during the period between May 1967 and January 1968 with special emphasis on the November 1967 - February 1968 segment

- REFERENCES:
- (1) Memorandum, dated May 19, 1967, to Mr. Tecwyn Roberts, from Mr. Walter G. Burton, Jr., Subject: Response to Reference Memorandum
 - (2) Memorandum, dated October 18, 1967, to Mr. Ozro H. Covington, from Mr. Burton, Subject: Transfer to Code 800
 - (3) Memorandum, dated October 29, 1967, to Mr. Burton, from Mr. Henry F. Thompson, Subject: Same as Reference (2)
 - (4) Memorandum, dated December 1, 1967, to Mr. Walter G. Burton, Jr., from Administrative Operations Officer - Manned Flight Support Directorate, Subject: Housing & Support Requirements
 - (5) Memorandum, dated December 1, 1967, to Mr. Walter G. Burton, Jr., from Administrative Operations Officer - Manned Flight Support Directorate, Subject: MICS Reporting
 - (6) Memorandum, dated December 5, 1967, to Distribution, from Mr. Walter G. Burton, Jr., Subject: Preparation of Material for Management Information and Control System (MICS) Presentation to Center Directors on December 21-22, 1967
 - (7) Memorandum, dated December 12, 1967, to Mr. James C. Reese, from Mr. Walter G. Burton, Jr., Subject: Request for Approval to Expend Government Funds which will Enable Me to Continue My Formal Education

In late 1963, as a staff member of the Manned Flight Support Division and Station Director of the Network Engineering and Training Center, the culmination of two and a half years of effort on a major assignment was reached when the Manned Space Flight Engineering and Training Center was completed, staffed, and functioning; in support of the Gemini Program. Program direction was now centered in the Operations Support Section, Manned Flight Operations Branch with Mr. George J. Karras assigned as Station Director (Manned Space Flight Network Engineering and Training Center - Wallops Island, Virginia).

From this point on for the next three and a half years, clarification of job responsibilities was never obtainable until in late 1967. After years of discussion, a new job description

was finally approved. During this long period of time I was periodically assigned and worked on many Division problems, but was never able to acquire the necessary interest or support for even the assigned task, much less establish a relationship with Division Management that would be conducive to productive work. In fact, for at least 50% of this three and a half year period, I was left in total apathy without any work assignment. Apathy, such as mine, or the "silent, ignored treatment" can only result in a considerable loss of an employee's self respect. Substantial facts and supporting documentation are available to completely cover the difficulties encountered during this lengthy period. It is sufficient, at this time, to state that a zero response was received from all cognizant levels of management relative to my best efforts to contribute in any assigned area, or to my many requests to discuss major difficulties encountered. Elaboration on these years of effort would require more time than is now available and are, therefore, left at this point to be discussed with you in whatever detail you may later desire.

Emphasis will now be placed on the time period from May 1967 to February 1968, since this is a segment of time for which you are most familiar.

Reference (1) is a memorandum which obviously defines a personal problem. The attached memo signifies that this memorandum was forwarded as requested, even though the memorandum is not identified and the memo is unsigned. Nevertheless, I am left with the impression that at least the courtesy copies arrived at the Directorate Level.

Again response to this memorandum was zero. Even the addressee found it expedient to completely ignore the situation described.

The inclusion of this reference and the previous discussion has served one purpose, as intended, namely to establish firm Directorate cognizance of these personal difficulties which were allowed to continue fermenting.

On July 25, 1967, after many months of rumor, GSFC Circular Number 1015 was released establishing the Manned Flight Support Directorate. Subsequent circular releases defined certain Directorate elements, i.e., Circulars 1031, dated September 21, 1967 and 1036, dated October 13, 1967.

By now, five more months had passed and still no comment from anyone as to whether or not I might have passed away as opposed to being ready, willing, and able to earn my salary.

These conditions prompted my informal memo to Mr. Covington, Reference (2). Reference (3) is attached to focus your attention on the reply received from you. I quote the third and fourth sentences.

"It is expected that your assignment will be effected about the middle of November and will concern you (sic) the date of availability of office space and the definition of your new function. I will discuss your new assignment with you prior to that date, but after completion of the 501 mission."

Three things are important to note here, no mention was made of my request to discuss previous years of effort, office space would be available, and discussion of new assignment would take place prior to my move date.

To date there has been no discussion of my previous years of effort, there was no office space available, and there was no discussion of my new assignment prior to or after moving into Building 23. I have already been told, in essence, to go to work or get fired! In support of these statements I shall simply define a discussion.

Discussion - Consideration of a question in open debate; argument for the sake of arriving at the truth or clearing up difficulties.

Now let us turn our attention, in detail, to the months of November and December 1967, since I have been led to believe that these are the only months worthy of consideration in this crisis situation engendered by management actions taken in January - February 1968.

On November 15, 1967, at 2:00 PM, I received a telephone call from you directing me to move from the University Building to Building 23 at the Goddard Space Flight Center by Monday, November 20, 1967. This move was effected on Friday, November 17, 1967, at 2:30 PM, when my furniture and equipment was unloaded in Room E226B of Building 23. No preparations had been made for my move to Building 23, therefore, my furniture and equipment had to be stacked into Room E226B in an unusable condition.

On Wednesday, November 22, 1967, at 10:00 AM, you walked into Room E226B and very briefly (two minutes) discussed a requirement for a Project Management Information and Control System (PMIS) presentation due in mid-December. We then walked into your office where you gave me a packet of material representing the first presentation and stated that you would get with me on December 4, 1967, to clarify the requirements. At this time, I again expressed my desire to discuss in detail some of my past experiences in order that certain unfortunate events would not occur in my new assignment. Again the general response was zero.

Reference (4) clearly shows that I immediately directed my energies to the new assignment. It also shows that you were made aware of conditions necessary for me to provide optimum performance. On this same date, November 22, 1967, I arranged for a meeting with Mr. H. E. Tetrick of the Project Support Branch,

for the afternoon of November 24, 1967, to become familiar with the MICS concept and requirements, and a meeting with Mr. Milton P. Denault (Management Information Systems Branch) for November 27, 1967, to discuss support availability techniques. Reference (5) transmits information requested on November 22, 1967, and acquired from Mr. Denault on November 27, 1967. Please note the seven day delay and that the information was available for use five days before it was made available from the proper source. This represents a standard sample of help received from your Administrative Operations Officer. These meetings were held and necessary information was gathered to proceed in a sensible manner.

November 24, 1967 - In your absence I requested and was granted a twenty-minute audience with Mr. Covington (2:20-2:40 PM) to clarify the requirements for the MICS presentation to be given in December.

November 27, 1967 - I was informed by Mr. Ray Topolski that Mr. Tecwyn Roberts did not wish to discuss MICS with me and that he (Mr. Topolski) had been assigned to coordinate the Division effort. This made no sense to him nor me. Ten copies of MICS handbook NHB 2340.2, with revisions, were ordered through Mrs. Darlene Fleishman for study and distribution. Study of NHB 2340.2 indicated that the management system was similar in many ways to the Configuration Control System of Management (CCM) being developed.

November 28, 1967 - A meeting was held with Mr. Robert T. Barnes of your staff to discuss MICS versus CCM due to similarities, and a copy of NHB 2340.2 was given to him for his review. At this meeting certain parts of the CCM documentation was loaned to me for study.

November 30, 1967 - I requested a discussion with the Manned Flight Operations Division, but Mr. Call said that they had no part to play in the (MICS) program, however, he would like to see the handbook. The information (NHB 2340.2) concerning MICS was forwarded to both Mr. Call and Mr. Roberts, via Mr. Topolski.

December 4, 1967 - I was informed that a (MICS) meeting had been held on December 1, 1967, but neither Mr. Topolski nor myself ever found out what transpired or who attended. A meeting was held with Mr. Green of the Ships Office and Mr. Parnwell of the Project Support Branch to define their part in the upcoming MICS presentation. A request was made of Mrs. Doris Simons to set up a new meeting with you, since you were not available on this date. Mrs. Simons was also requested to provide me with a copy of the latest classified scheduling information and all future such information as it arrived. She said that she could not do this and as a matter of fact she never did.

December 5, 1967 - Reference (6) is a memorandum to all elements of the Directorate explaining the status of the MICS presentation and requesting specific action on their parts. The memorandum was an attempt to organize the effort in some reasonable manner.

December 6, 1967 - On this date we had our first meeting (1:00-1:45 pm) which I catalogued at the time as significant, however, my thoughts turned out to be premature. I related the difficulties I had been having in getting information and support necessary to develop a reasonable MICS presentation by December 20, 1967. Specifically I discussed the following:

1. Manned Flight Engineerings refusal to give me an audience concerning MICS.
2. Impropriety of assigning Mr. Topolaki as an interface.
3. Difficulty in getting established in the building due to lack of interest in providing space or equipment.
4. Difficulty in getting copies of classified information necessary to accomplish the assignment and requested that you approve delivery of all pertinent classified information in a timely manner.
5. Manned Flight Operations Branch lack of interest in MICS.
6. Similarity of MICS and CCM systems.
7. Status of effort to date in preparing MICS presentation.
8. Latest requirements to be included in current MICS presentation.
9. Clarification as to how I was to fit into the Organization.
10. Requested my memorandum Reference (6) be approved and forwarded.
11. Requested information as to who had been told what concerning MICS, i.e., what additional efforts if any were under way as to result of the meeting reputed to have been held on December 4, 1967.
12. Requested status of my memorandum (Reference (1), this section)

Final analysis of this meeting can now be described as nothing more than a nondirective inter view as far as problem solving was concerned. This can be firmly stated, since none of the requests for clarification or support were ever received, even though promised.

December 7, 1967 - Mr. Barnwell was given a briefing on MICS materials he should expect to receive for conversion into final form, and all material which was available was given to him.

December 8, 1967 - I was summoned to your office at 8:15 AM, where, in front of you and Mr. Barnwell, I was severely criticized for 25 minutes by one Mr. E. T. York (Chief, Program Support Division) for my failure to utilize his personnel, my approach to preparation of the MICS presentation, and my poor utilization of the proper management techniques. At 4:30 PM I was again summoned to your office and, along with Mr. Barnwell, gave you a complete briefing on the status of the MICS presentation, the problems associated with meeting the final date (December 15, 1967) for delivery to the Management Information Systems Branch, and recommended that in light of the many unresolved problems we delay the presentation. The recommendation was denied and the meeting ended at 5:30 PM.

December 12, 1967 - Between December 8, 1967 and this date you were unavailable. During this time I had been digging bits and pieces of information from any and every source. Most of the information provided was either redundant, superfluous, ambiguous, incomplete, incorrect, outdated, or severely late. In fact you personally delivered a pile of paper representing the major procurement status at 8:45 AM, this date, as you flew through my office in a thirty-second flash. Today, I finished converting all of the inconceivable forms of information imaginable - into a reasonable MICS format and gave them to Mr. Barnwell for final completion.

As this effort is approaching some sort of fruition, I am approaching some sort of collapse from sheer mental frustration and anxiety, but, see it to the end I will!

December 14, 1967 - A review of Mr. Barnwell's progress indicated that he had two charts plus certain ship information to complete. As to time of completion or even certainty of completion, he would not commit himself!

December 15, 1967 - A final review was held (1:00-3:45 PM) in your office of the MICS material available for delivery to the Management Information Systems Branch. Messrs. Furton, Densult, Barnwell, and yourself were in attendance. During this review you, Mr. Densult, and other associates, by telecon, displayed great talent in developing a last minute MICS presentation from my best efforts, which were reputed to be inaccurate, incomplete, and unacceptable.

In other words, the last bit of my human dignity was theoretically removed. My notes on this meeting took the form of just one word, SNOW.

December 19, 1967 - I attended the MICS review from 1:00-4:30 PM and noted that the material presented from the Manned Flight area was essentially that which I delivered to you on December 15, 1967 - How Enlightening.

December 21, 1967 - Reference (7) is a copy of a memorandum which was attached to the proper GSFC forms requesting additional

training. The entire package was returned this date by Mr. James J. Donagan - Associate Chief, Manned Flight Planning and Analysis Division. His comments as written on the route sheet were to the effect that approval could not be given until I had proven myself by initial funding, but that I should talk to Mr. James C. Reese - Chief, Employee Development Branch. It was noted that a great deal of management interest was displayed here also, since the courtesy copies provided had not even been accepted. Next, I forwarded the entire package to Mr. Reese.

January 3, 1968 - The Training Package, minus the route sheet with Mr. Donagan's comments, was returned to me from Mr. Reese with a note indicating that I should get my supervisor's approval and return immediately. A temporary decision was now made - FORGET IT!

January 5, 1968 - At approximately 12 noon, because of automobile difficulties, I attempted to report for work. I reported to the security office and requested a temporary pass for the day and a sticker for my car, since it was newly acquired. I was refused both and given a choice of accepting a temporary pass for the day or a car sticker which had to be permanently attached before entry. I requested that I be allowed to tape the sticker on until I finished work and had a chance to put the sticker on properly. This request was denied and again I was given the choice, take it or leave it.

My decision was to leave it, since to me the choice was completely unreasonable in the face of a reasonable request.

January 10, 1967 - A similar set of circumstances were presented to me on this date, when I was requested to prepare another MICS presentation by January 12, 1967. Again, without benefit of the discussions requested, I was simply told to perform or suffer the consequences.

January 24, 1968 - Today management made a major breakthrough in personnel handling techniques. For this is the day an experienced employee either accepts a new job assignment without benefit of question or is arbitrarily put on Leave Without Pay.

February 13, 1968 - Today, we suggest adding prosecution to persecution while still demanding performance, but let's not deceive ourselves into thinking we have developed a new formula for Space Age Management.

Summation

The writer concludes that this entire section, having been prepared from factual documentation, personal notes, and clear thinking constitutes mitigating circumstances that have until now been rare a proper hearing by all levels of management at this Center.

App. 66

memo

Date: 5/25/67

o:

Mr. Burton

- ☐ Action
- ☐ Reply
- ☐ Info
- ☐ Report

I have initialed and forwarded your memorandum as you requested.

J. C. Jackson

550:JCJ:slh

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-107

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Tecwyn Roberts, Chief
Manned Flight Operations Division

DATE: May 19, 1967

FROM : Mr. Walter G. Burton, Jr.
Manned Flight Operations Division

SUBJECT: Response to Reference Memorandums

REFERENCES: (1) Memorandum of February 28, 1967, Mr. Roberts to Mr. Burton,
Subject: Assumption of Duties and Responsibilities

(2) Memorandum of February 28, 1967, Mr. Roberts to Branch Heads/
Segments of Division Staff, Subject: Duty and Responsibility
Assignment for Mr. W. G. Burton, Jr.

1.0 Previous Experience

1.1 After careful study of the working environment provided for me since my arrival at the Goddard Space Flight Center in June 1961, I direct your attention for purposes of analogy to a small segment of effort during June and July of 1965.

BEST COPY
from the orig

1.2 In June 1965 I was given an assignment, without benefit of discussion or choice, to the Apollo Extension System (AES) Study Group. This in itself would seem to be well within management authority, but outside of what I would consider a prudent management approach to handling subordinates; where positive motivation is even recognized much less practiced.

1.3 To render the assignment doomed to failure from the start, management needed only to withdraw any form of support or constructive direction. Indeed, this was done with amazing precision and timeliness.

1.4 Let us now amplify this seemingly hopeless condition by exposing the subject to members of the AES Study Group whose backgrounds for contribution were diverse and in some cases nonrelated to the job at hand. In order to be more precise, I suggest that the use of non-related as a descriptive term also connotes lack of interest; which was amply demonstrated by some members of the group, as well as lack of management experience on the part of the assigned group leader.

1.5 As an operational group the Leader held meetings almost daily in which minutes of the meetings were written on one day, discussed on the next day and then modified to reflect new decisions and/or direction. A study of this situation revealed that the Group Leader was hampered by having to receive approvals and/or new inputs from person(s) even more removed from the immediate task. A subjective look at the situation suggests that it is not too difficult to envision a state of conflict and confusion.

1.6 Let the leader continue to receive new inputs daily as to direction, scope of effort, schedule for study completion, etc., and allow him to pass this changing information on a continuing basis to his task group. The results should be obvious, for by now having lost some members of the Group and received replacements with different backgrounds and aspirations, you have quite adequately synthesized a condition of role conflict and ambiguity, which reduces the Group to a state of nonproductive frustration.

1.7 To carry the management description one step further, let us now allow the Group Leader to take a two-week vacation and assign the responsibility to his assistant who is equally deficient in management practices; where decisions are necessary for progress. Needless to say, measurable progress was not made, since the newly assigned temporary Group Leader found himself to be just one layer deeper in the management hierarchy.

1.8 The writer, having experienced such management, as briefly described, with all of its biases nonremoved, elected after approximately sixty days to withdraw from his assignment. At the end of this period, having failed to elicit any management support from either the Group Leader or his own management, he felt that any further contributions on his part were near impossible. Incidentally, at the time of my elected withdrawal from the Group, while having amassed reams of data, they had not as yet been able to establish even a firm outline for their study report, which was due in final form six weeks hence.

1.8.1 It might be noted that today I feel the same way and would not, at this point in time, have acted any differently under the same circumstances.

2.0 Curiosity

2.1 One does not undergo such an experience without becoming curious as to its nature and cause, for by now this writer had journeyed just this side of minus infinity; which will be the subject of a more detailed document.

2.2 Further discussion concerning the subject of curiosity at this point can now be converted to an intensive study. For you know as well as I, that the productive working environment under your leadership has been worthy of study by anyone in my position; with the desire, mental capacity, and physical stamina to do so.

3.0 Summary

3.1 Careful study of the situation prevailing with regard to my new assignment shows a striking similarity to the conditions described in paragraph 1.0.

3.2 This being the case, I submit that, I again invoke sub-paragraph 1.8.1; which suggests that as far as I am concerned no one; under similar environmental conditions, could adequately perform this or any other assignment.

4.0 Conclusions

Further research on my part is necessary however, and shall be carried out in order to better define and delineate the possible hazards or attributes in the control and development of the behavioral characteristics of human organisms by Extrusion Techniques.

Walter G. Burton, Jr.
Walter G. Burton, Jr.

cc: Dr. J. F. Clark
Mr. J. T. Mengel
Mr. O. M. Covington
Mr. H. F. Thompson
Dr. M. J. Vaccaro
Personnel

App. 69

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Rev 2 3/28/61 /JA
DATE: February 28, 1967

TO : Walter G. Burton, Jr.
Manned Flight Operations Division

FROM : Chief, Manned Flight Operations
Division

SUBJECT: Assumption of Duties and Responsibilities

The attached job description identifies a number of duties and responsibilities critical to the proper functioning of the Manned Flight Operations Division. We have discussed your assuming the duties outlined, and I am confident it is clear what the job entails since you have been working in these areas since your assignment to the Division staff.

However, because of uncertainties you have expressed concerning the ability to accomplish such duties, I am assigning you to this job contingent upon your completing a satisfactory performance period of approximately six months. During this period I want you to direct your efforts primarily to the preparation and expenditure of the MFCO budget. As a first step in carrying out these duties, I would like you to submit to me a written plan defining the practical manner in which this Division can best establish a budget and subsequently control the expenditure of funds within that budget. I would expect that you will seek advice and information from many sources both inside and outside this Division - however, I want the report preparation to be independently executed by yourself. I would expect that this report will discuss and recommend management approaches to the major problems we currently face in budgeting, committing and obligating funds. The report should also cover the milestones and mechanics for preparation of the budget together with an identification of the role you will personally play in this activity.

I would like you to complete a draft of this report to be available for review by March 31, 1967.

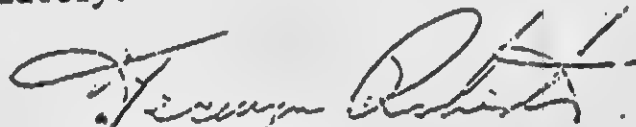
During this next six months I would further like to receive from you in writing an identification of the difficulties you encounter in carrying out this job assignment. In particular you should identify any lack of response from individuals or management dictates which could be the cause for your inability to accomplish the job.

Attached is a copy of a memorandum which identifies to the GSFC organization your new assignment. If there should be any questions regarding this assignment, you should notify me immediately.

Attachment:

550:JCS:slh

cc: J. C. Jackson
Personnel


Tecwyn Roberts

OPY AVAILABLE

ginal bound volume

M E M O R A N D U M

TO: Mr. J. C. Jackson
Mr. R. L. Owen
Mr. H. W. Wood
Mr. D. W. Call
Mr. J. J. Donegan
Mr. P. R. Dolvin

February 28, 1967

FROM: Chief, Manned Flight Operations Division

SUBJECT: Duty and Responsibility Assignment for Mr. W. G. Burton, Jr.

The purpose of this memorandum is to notify you of the principal function of Walter G. Burton in this office.

Mr. Burton is identified as the individual responsible for establishing a coordinated MFOD budgetary plan. This will include responsibility for the planning, coordinating and execution phases of the fiscal operation. In order to accomplish this task, Mr. Burton will take part in the management and technical planning activities of this Division which relate to the effort.

It is anticipated that you will provide Mr. Burton the support and cooperation necessary in carrying out these duties.

Original signed by:
J. C. Jackson

Tecwyn Roberts

550:JCJ:slm

cc: Mr. J. T. Mengel
Mr. O. M. Covington
Mr. E. H. McKeehan
Mr. W. E. Mathis
Mr. H. F. Thompson

MEMO

10/11/67

Date: _____

To: Mr. O. M. Covington

☒ Action
☐ Reply
☐ Info
☐ Report

Ozzie:

My understanding is that I have been assigned to Code 800 during the reorganization which took place in July of this year.

If this is correct, may we get together at your convenience and discuss my new assignment.

As part of the discussion, I am particularly looking forward to a review of my participation in the Manned Flight Effort, here at Goddard, since 1963.

Luigi
Glenn

App. 72

memo

Date: 10/29/67

FROM: HENRY F. THOMPSON

- ☐ Action
- ☐ Reply
- ☐ Info
- ☐ Report

To:

Mr. W. Glen Burton

Glen:

You were transferred to Code 800 for payroll purposes in July. However, the actual transfer of the job assignment has been in line with the progress of the overall establishment of the Directorate and the reorganization of its internal elements. It is expected that your assignment will be effected about the middle of November and will correspond with the date of the availability of office space and the definition of your new function. I will discuss your new assignment with you prior to that date, but after completion of the 501 mission.


Henry

BEST COPY
from the original

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

DATE: December 1, 1967

TO : Mr. Walter G. Burton, Jr.
Manned Flight Support Directorate

FROM : Administrative Operations Officer
Manned Flight Support Directorate

SUBJECT: Housing and Support Requirements

Ref: Your Note to Me dated November 22, 1967, Subject: Minimum Requirements Necessary to Proceed with Current Assignment.

This memorandum is being prepared to answer several questions raised by referenced note in connection with the housing and support requirements necessary for carrying out your recent assignment:

1. As for the relocation, I understand this has been accomplished, though I was not satisfied that this was necessary.
2. Furniture requirements may be arranged through Mr. Norm Ritchey of the Property Branch.
3. As for telephone arrangements whereby incoming calls can be recorded in your absence, it is recommended that arrangements be made with other personnel housed in that location to answer your calls in your absence and you answer their calls in their absence. This is deemed necessary due to administrative operating fund restrictions.
4. Secretarial support services will be provided by Miss Darlene Fleshman. These services should be coordinated through Mr. Robert Barnes.
5. Office supplies should also be obtained through Miss Fleshman.

I trust that these arrangements will enable you to carry out your assignments in an efficient and highly professional manner.

cc: Mr. Thompson
Mr. Barnes
Miss Fleshman

William E. Mathis
William E. Mathis

11/22/67

To: William Mathis

From: Burton

Subject: Minimum Requirements
necessary to proceed with
current assignment.

1. relocation as discussed this
date

2. 1 each Table & 5 each
chairs w/ arms

3. Telephone arrangement whereby
incoming calls can be
recorded in my absence

4. Source definition of secretarial
support

5. Same as #4 for supplies

Note: Progress depends on expediency re
your other commitments. THTS

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

DATE: December 1, 1967


Memorandum

TO : Mr. Walter G. Burton, Jr.
Manned Flight Support Directorate

FROM : Administrative Operations Officer
Manned Flight Support Directorate

SUBJECT: MICS Reporting

Attached hereto are comments by Mr. Milton F. Denault, Head of the Management Information Systems Branch, concerning this Directorate's initial presentation to the monthly status review. Mr. Denault has provided his observations in an attempt to assist us in developing our MICS reports in such a manner to make them constant with other Center inputs. It is suggested that a close liaison be established with Mr. Denault during the initial stages of MICS development.


William E. Matnis

800/WEM/ps

Attachment

cc: Mr. Thompson

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

DATE: November 21, 1967

TO : William E. Mathis
Administrative Operations Officer
Manned Flight Support Directorate

FROM : Milton F. Denault, Head
Management Information Systems Branch

SUBJECT: Initial Presentation of Manned Flight Support Directorate Monthly Status Review

For the benefit of Mr. Covington and those of his staff who will be preparing the next version of his status review, I am forwarding some observations which I recorded at his initial preview presentation to the Director and his staff on November 20, 1967. Hopefully, they will help to complete the range of comments and instructions as he noted himself.

I am prepared to assist your Directorate in interpreting those portions of the PMICS as are applicable to the Manned Flight Support Directorate programs.

Milton F. Denault

Milton F. Denault, Head
Management Information Systems Branch

CC: Mr. York
Mr. Tetirick

Notes on Implementation of PMICS Reporting Procedures to
Programmatic Items of Manned Flight Support Directorate

Initial preview, Director's Staff Meeting, November 20, 1967

General Observations - Dr. Clark

1. Use normal MICS chart format
2. Create summary hardware availability chart
3. Systems which have a major impact (cesium clock, etc.) should be reported on
4. Major procurement interfaces with Headquarters should be included
5. Each mission display should include hardware problems as well as software, when they exist
6. Software charts should stop at item #2 (on current chart). Remainder of items are probably external interface milestones
7. If milestones now shown on individual NCG charts were shown on a single chart per MICS, conflicts of effort vs. time would be readily apparent.

Observations on Specific Charts

The following observations are intended to identify those items which should be changed to make them compatible with Center reporting system procedures.

APOLLO LAUNCH SCHEDULE

1. Use standard schedule chart format
2. Create other symbols for designation of "Manned-Unmanned" missions as the ones displayed conflict with standard "scheduled-completed" symbols of MICS
3. Create other symbol for "decisions" as the one displayed (X) conflicts with "request for schedule change" in MICS
4. Arrows are upside down compared to MICS

NARRATIVE ANALYSIS

1. Not required as Vu-graph display. Prepare as printed handout. Use MICS format to provide for signature for "accomplishment responsibility," one of the control features of the MIC system.

NCG - 171, 722, 751, 735, 735 (level 3?)

1. Milestones should be identified as Level 2 and Level 3, and charts constructed accordingly.
2. External interface milestones should be identified and displayed appropriately on Level 2 chart.
3. Triangle milestone event is upside down compared to MICS usage.
4. Milestones should be identified on separate lines.
5. Additional milestones, if possible, should be identified for long spans of time (4-5 months), per Mr. Wasielewski.
6. Horizontal arrow should be used to identify items which equate to a launch readiness date, or for "Center Controlled Milestones."

APOLLO INSTRUMENTATION SHIPS SCHEDULE

1. Maintain present format of this chart even though it departs from MICS (per Dr. Clark), with these changes:
 - (a) put more milestones in TESTING
 - (b) rearrange symbolization to as follows:

YARD	=	XXXXXXX
TESTING	=	XXXXXXXX
SUPPORT	=	XXXXXX
2. Use as summary chart for ships - with backup for each ship (Level 2 and Level 3?)

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

Held / 6 Dec 67
HFT

TO : DISTRIBUTION

DATE: December 5, 1967

FROM : Walter G. Burton, Jr.
Manned Flight Support DirectorateSUBJECT: Preparation of Material for Management Information and Control System
(MICS) Presentation to Center Directors on December 21-22, 1967

For those of you that may not be familiar with subject presentation, a copy of document NHB 2240.2 dated November 1966, along with changes 1 and 2 dated March 1, 1967, and June 9, 1967, respectively, have been forwarded to Division and Office Chiefs along with a copy of a memorandum dated November 21, 1967, which reviews the first presentation made by this Directorate on November 20, 1967.

Currently, Code 800 is now scheduled for its second presentation on December 21 - 22, 1967.

The limit of my information at this time as to what is desired for this presentation is as follows:

- a) Status of Apollo Ships
- b) Ships Documentation
- c) Network Software Status
- d) Status of any known changes on the order of 225 K or more, which either are, or may be required.

Note: Scope should be limited to those significant requirements necessary to support the first Manned Orbital mission.

Certain of you have had occasion to discuss this program with upper level Code 800 personnel and are possibly more aware of what should be covered than I; therefore, it is expected that you will provide your inputs to this office no later than December 11, 1967, in order that a review can be made to determine not only what material will be presented, but also allow time to convert certain pertinent data to a MICS format.

In this regard it is assumed that proper utilization, at Division level, of the MICS handbook previously forwarded will enable you to take the first step in preparing your information on the MICS milestone charts described therein.

-2-

SUBJ: Preparation of Material for Management Information and Control System (MICS) Presentation to Center Directors on December 21-22, 1967

It should be noted that this office is not prepared at this time to interpret the various chart presentation methods utilized throughout the Directorate which would be necessary if we were to attempt the preparation of the entire presentation from bits and pieces of various information.

Further, a narrative will be required to support your chart presentations so that proper interpretation can be accomplished.

A final request which will be necessary if this program is to continue -- Be prepared to designate responsible individuals to work with me in preparing and improving each monthly presentation.

I can be reached at ext. 4073 if I can be of further assistance.

Walter G. Burton, Jr.

800:WGB:ml:

Distribution:

Mr. Covington
Mr. Thompson
Mr. Wood
Mr. Call
Mr. Roberts
Mr. Owen
Mr. Varson
Mr. Donegan
Mr. Stelter
Mr. McCaffery
Mr. Greene

Memorandum

Oct. 11, 1967

To: Mr. James C. Reese
Employee Development Branch - Code 223

From: Walter G. Burton, Jr.
Manuel Flight Support Directorate - Code 850

Subject: Request for approval to expend Government Funds which will enable me to continue my formal education.

1.0 Purpose

- 1.1 This memorandum will summarize briefly what is to be accomplished, with this effort representing a first start.
- 1.2 The end product desired, at this time, is the acquisition of a Masters Degree in Business Administration.

2.0 Scope

- 2.1 Admission to the University of Maryland Graduate School of Business Administration, for one with a technical degree, requires the completion of approximately twenty-seven semester hours of what they refer to as core course requirements.
- 2.2 These are as follows:

2.2.1 Principles of Economics	6 hrs.
2.2.2 Principles of Accounting	6 hrs.
2.2.3 Business Law	3 hrs.
2.2.4 Statistics	3 hrs.
2.2.5 Marketing	3 hrs.
2.2.6 Management and Organization Theory	3 hrs.
2.2.7 Business Finance	3 hrs.
- 2.3 It is believed that the requirement for six semester hours credit in Economics will be waived, since this was accomplished as part of the work necessary to take my MSc from the University of Virginia.
- 2.4 Therefore, after having successfully completed the twenty-one semester hours remaining and also having passed the Graduate School Admission Test, the plan is to apply for the GSFC three quarter graduate work program.

- 2.5 After taking my MBA from the University of Maryland, I shall then begin a search for the support necessary to again pursue advanced studies which will ultimately lead to a Phd. in psychology.

3.0 Investigation

- 3.1 A cursory analysis was made of the three quarter program available at the George Washington University, which admittedly was easier to accomplish, but it was felt that both the curricular and the degree conferred in Engineering Administration represented too much specialization for what I now envision as requirements for the development of executive excellence for the future.
- 3.2 Secondly, I investigated the possibility of acquiring the necessary core requirements, discussed in paragraph 2.2, from the Prince George Community College with the thought that not only was the location more convenient for me, but also the initial work could be carried out at half the proposed cost to the government.
- 3.3 The results of my inquiries indicated that neither the George Washington University, nor the Prince George Community College could meet my needs; the latter being not properly accredited.

4.0 Conclusions

- 4.1 Robert Browning in *Rabbi Ben Ezra* put it this way:

"What I aspired to be
And was not, comforts me."

- 4.2 My one desire, in being, is to set a standard of excellence for Federal Service.
- 4.3 In order to meet the managerial challenge of the future, I now ask the Federal Government to provide the necessary support so that I may prepare myself to assist in molding the managers who will follow.

800/WGB/plf

S/S
Walter G. Burton, Jr.

cc: Mr. O.M. Covington)
 Dr. Michael J. Vaccaro) Without Enclosure
 Mr. Burgess H. Hildreth)

Management's Ex. No. 4

[Caption Omitted in Printing]

March 20, 1968

Dr. John F. Clark - Director
Godard Space Flight Center
Greenbelt, Maryland 20771

Dear Dr. Clark:

After many years of effort in trying to establish reasonable working relationships with the management officials at this Center, and in particular those officials assigned to the Manned Flight Area, I find it necessary due to prevailing circumstances to consider resigning under protest of the duress, intimidation, and deception which has apparently permeated the personnel policy areas of this Directorate.

Certainly I would be among the first to admit that an executive's ability to make critical decisions is more crucial to the survival of an organization than his particular skill in dealing with people.

An organization saturated with inappropriate human-relation practices, however, is unlikely to remain profitable for long, regardless of the personal brilliance of the man at the top.

Current thinking today suggests that the quality of supervision is relatively unimportant in determining productivity. What is important is not that every manager be a high-quality leader, but that the structure of the organization and its management policies be such as to encourage sound human-relation practices.

If one were to look deep within this organization he would not find a shortage of talent nor a shortage of people willing to take responsibility, but I am certain that he would find a tremendous loss of efficiency due to the large numbers of people who are unwilling to accept the uncertainty which management seems to foster rather than minimize.

[Letter found at 183 thru 186 of Part C. Appeal file 2
of Civil Service Administrative Record]

As for myself, I was left with few alternatives as I progressed into my sixteenth year of Federal Service. Unfortunately, the choices had to be made based on principle rather than expediency; and to date they have proven to be extremely costly.

Since you may not be aware of the circumstances which surround the current status of my association with the Goddard Space Flight Center, I cite the following:

- a. On January 24, 1968, I was arbitrarily placed on forced Leave Without Pay for refusing to accept a new assignment without benefit of discussion concerning past performance difficulties, and without benefit of discussion concerning the new assignment; relative to establishing the authority and resources which would be required to carry out the task.
- b. On February 13, 1968, I received a notice of proposed action to remove me from Federal Service and a notice of denial of an earned in-grade salary increase.
- c. Timely response was made to both actions.
- d. The denial of the in-grade salary increase was sustained, on appeal, on March 13, 1968.
- e. The proposed removal action is still pending.

Apparently, management personnel involved so far fail to see, or choose not to act on, the central point at issue; which simply involves a request for a fair appraisal of my past performance and difficulties for the purpose of providing me with the necessary visibility to approach the future with some degree of confidence.

Every possible effort, on my part, has been made to communicate and resolve the issue with this Directorate and with the Personnel Office, but all attempts have been unsuccessful to date.

Unfortunately I am financially unable to continue sustaining my family while also meeting other financial commitments; without some form of determinate income.

I have failed to - Appeal file 2]

This being the case I would only hope that we may meet and equitably resolve the problems set forth. If you should deem this request as not possible or proper then it would appear that the only alternative left open to me is to resign under protest and present the case to the Civil Service Commission for their resolution.

I look forward hopefully to your favorable response.

Sincerely,

W. G. B.
Walter G. Burton, Jr.

2 Encls:

1. Letter, dated February 28, 1968
to Mr. Henry F. Thompson,
from Mr. Walter G. Burton, Jr.,
Subject: Reply to Notice of
Proposed Removal in Your Letter,
dated February 13, 1968
2. Condensation of the Central Problem

CONDENSATION OF THE CENTRAL PROBLEM

For a number of years the management officials of the Manned Flight effort have found it expedient to utilize my potential in an environment of almost total isolation. Under these circumstances, whenever work was assigned the necessary resources and support were never made available. In most cases no comment could be elicited concerning the value of my effort or the difficulties encountered in carrying out the assignments. Part IV of Enclosure 1 details some of my experiences, assignments, and difficulties in trying to achieve assigned objectives over the years.

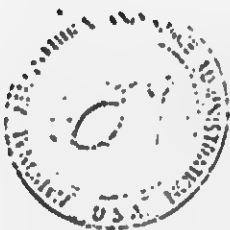
Of paramount importance is the fact that I have never before refused an assignment even under the severe restraints that have been applied. In this case I could not, in good conscience, accept an assignment which I felt from past experience could not be carried out; without clarification of the resources and authority which would be assigned to complete the task.

Also of vital concern to me, as was made quite clear, was the matter of performance appraisal, and career growth potential of the assignment in question. Clarification in these two areas was also denied.

To date, Mr. Thompson has chosen to ignore these important considerations and instead placed his emphasis on monetary and other minor aspects of the problem.

It should also be noted that even though I have been placed on Leave Without Pay, against my wishes, I have reported to work as usual and continued to carry out routine work in the same manner as required in the past.

In summary, the assignment was refused primarily because the authority and resources necessary to carry out the task were not made available and secondarily because career growth potential of the job and the employee were items which were completely excluded from the discussion.



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
GREENBELT, MARYLAND 20771

Mr. Walter C. Burton, Jr.
5902 - 85th Avenue
Hyattsville, Maryland 20784

March 26, 1968

Dear Mr. Burton:

Subject: Notice of Decision to Remove

My letter of February 13, 1968, informed you of a proposal to remove you from your present position of AST, Technical Management, GS-14, \$17,425 per annum, with the Office of the Assistant Director for Manned Flight Support, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, Maryland, not earlier than 30 days from the date of your receipt of the proposed notice.

I have given careful consideration to the information contained in your letter of reply dated February 23, 1968, and to the attachments thereto, as well as your oral replies to me of March 13 and 15, 1968. I find, however, that the charge of "refusal to carry out officially assigned job for the period January 11, 1968, through the date of this notice" and the reasons stated in the numbered paragraphs 1, 2, 3, and 4 of my letter of February 13, 1968, are fully supported by the evidence.

The charge is further supported by the fact that from the date of the proposed removal notice to the present date you have continued to refuse to carry out the duties officially assigned to you on January 11, 1968. It is my decision, therefore, that you be removed from your position in the Federal service effective March 29, 1968.

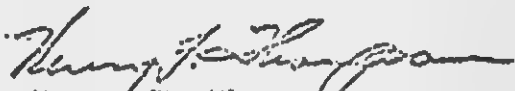
You have the right to appeal this action to the Director of the Goddard Space Flight Center or to the Chief, Appeals Examining Office, U.S. Civil Service Commission, Washington, D.C. 20415, or first to the Director of the Center and then to the Civil Service Commission according to the following procedure: If you appeal first to the Civil Service Commission, you forfeit your right of appeal to the Director of the Center. In order for your appeal to be considered by the Civil Service Commission, it must (1) be in writing, and (2) give your reasons for contesting removal with such offer of proof and pertinent documents as you are able to submit. An appeal to the Civil Service Commission may be submitted at any time after your receipt of this decision but not later than 15 calendar days after the effective date of your removal.

If you appeal first to the Director of the Center, you will not be entitled to appeal to the Civil Service Commission until the Director makes a decision on your appeal. If, however, no decision on the appeal has been made within 60 days after it was filed, you may elect to terminate your appeal to the Director and appeal to the Civil Service Commission.

If you elect to appeal to the Director of the Center, your appeal must: (1) be in writing, (2) give the basis for your appeal, and (3) state whether you desire a hearing in connection with your appeal. Should you elect to file an appeal you may do so at any time after receipt of this notice of decision but no later than 15 calendar days after the effective date of your removal.


Regulations concerning appeals are contained in Chapter 771 of the Federal Personnel Manual. Should you wish to obtain additional information concerning appeal procedures, contact Mr. Gary R. Purvis, Placement Branch, Manpower Utilization Division, Building 16, Room 125, extension 5006.

Sincerely,



Henry F. Thompson
Deputy Assistant Director
for Manned Flight Support

I hereby acknowledge receipt of this letter.



Walter G. Burton, Jr.

3/26/68
Date

(From Part C Appeal File 2, CSC, pages 66-67)



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
GREENBELT, MARYLAND 20771

FILED 1508

JUL 26 1968

Mr. Walter G. Burton, Jr.
c/o Mr. Donald M. Murtha
1000 Tower Building
Washington, D. C. 20005

Dear Mr. Burton:

This refers to Mr. Murtha's letter of April 8, 1968, through which you appealed the adverse action which separated you from the Goddard Space Flight Center on March 29, 1968.

I have carefully reviewed the Appeal File, including the transcript of the hearing which was held on May 14, 1968. My findings and decisions are as follows:

(a) An employee may be placed on leave when he is not ready, willing, and able to work. He should be placed on annual leave, sick leave, or leave without pay as the state of the employee's leave account, or the circumstances may require.

(b) You were not ready and willing to perform the job assigned to you; therefore, it is my decision that placing you on leave was proper. However, you should have been placed in an annual leave status. Accordingly, your leave account will be reconstituted to reflect the annual leave that normally would have been advanced to you at the beginning of the leave year (January 14, 1968) and any accrued annual leave you may have had to your credit at that time. You will be carried in an annual leave status for the period January 25, 1968, through February 13, 1968, except as outlined below.

(c) During the above period, you attended some official meetings during regular duty hours. You will be constructively returned to duty for those periods.

(d) During the advance notice period of your proposed removal you should have been (1) retained on active duty in your former position; (2) temporarily assigned to other duties; (3) placed on leave with your consent; or (4) suspended. The transcript of the hearing and the Appeal File do not

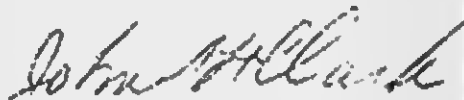
show that these alternatives were fully considered. Accordingly, you will be constructively returned to active duty during the period from February 14, 1968 through March 29, 1968, except for those times when it would have been proper to grant you either annual leave or sick leave, and for that period you have already been carried in a duty status.

(e) You were charged with "Refusal to carry out officially assigned job for the period January 11, 1968 through the date of this notice (February 13, 1968)." You did not refute this charge either in writing or during the hearing. Your continued refusal to carry out this officially assigned job is sufficiently serious to warrant your separation from the Federal service. As a result, your removal is sustained.

(f) In adjusting your leave status for the period from January 25, 1968 through February 13, 1968, we must take into account the facts that you should have been credited with your 1968 annual leave at the beginning of the leave year, and that you were separated on March 29, 1968.

As outlined in the notice of decision dated March 26, 1968, you have the right to appeal this decision to the Chief, Appeals Examining Office, U. S. Civil Service Commission, Washington, D. C. 20415.

Sincerely,



John F. Clark
Director

(From Part C Appeal File 2 CSC, pages 178-179)

Without discussing the arguments pro and con, it is found that a period of enforced leave constitutes an improper suspension only when all three of the following conditions are met. (1) The employee must have been placed on leave without his consent; (2) He must have been ready, willing and able to work; and (3) The enforced leave must have been used in a personal, disciplinary-type situation. In the instant case, conditions (1) and (3) were met, but it is found that condition (2) was not met. Hence, no improper suspension occurred.

On the basis of the discussion appearing above, it is found that NASA met all mandatory procedural requirements of Subpart B of Part 752 of the Civil Service Regulations in its processing of the removal action. No error was noted in the handling of the intra-agency appeal or in the conduct of the intra-agency hearing.

Burton (5)
ANALYSIS AND FINAL CS
Merits

In his reply to the charge, Mr. Burton said that it should read as beginning on January 10, 1968 instead of January 11, 1968; that he was given the assignment on November 22, 1967, instead of on December 6, 1967; that after his Wallops Island assignment ended in 1963 he had no definite position but was assigned to different division problem areas; that he was utilized only about 50% of the time and left in isolation the remainder; that his attempts to get information as to his status and his efforts to get a regular assignment were fruitless; that in July 1967 he was assigned to Code 800 without his knowledge (management claims this was for payroll purposes only); That he found out about this in October and wrote Mr. Covington, his division chief if he could discuss the matter with Covington; that Mr. Thompson responded that the assignment would occur about November 15th; that Thompson directed him to move to Goddard Space Flight Center, which he did on November 17; and that no arrangements had been made for him and his furniture had to be stacked in a side room.

Continuing, appellant said he had a short discussion with Thompson on November 22 and was told of a presentation to be given on a project management information and control system; that Thompson gave him a packet of material and told him they would get together on December 4 to clarify the requirements; that he worked on the project but had difficulties in getting the information and support from other persons necessary to perform the assignment; that on December 6 he had a meeting with Thompson and told Thompson of the difficulties he had experienced; that he was promised clarification of his assignment and support but the promises were not kept; that he worked on his assignment as best as he could and turned over the information he had assembled to Mr. Barnwell on December 13; that on December 15 his best efforts, which "were reputed to be inaccurate, incomplete and unacceptable" were utilized in developing a last minute MICS presentation; that on December 19 the presentation was made and essentially was what he had given to Thompson on December 15.

UNITED STATES CIVIL SERVICE COMMISSION
APPEALS EXAMINING OFFICE
WASHINGTON, D.C. 20415

APR 7 1969

APPEAL OF WALTER G. BURTON, JR.

UNDER PART 752, SUBPART B, OF THE CIVIL SERVICE REGULATIONS

Appeal of a removal from the position of Aerospace Technology, Technical Management, Grade GS-1301.1 (24)-14/4, \$17,425 per annum, Goddard Space Flight center, National Aeronautics and Space Administration, Greenbelt, Maryland, effective March 29, 1968.

INTRODUCTION

By letter dated August 2, 1968, Attorney Donald M Murtha appealed the removal action on behalf of Mr Burton. Mr Burton is a veteran who completed a probationary period in the Federal service. His combined military and civilian service covered a 16½ year span. Service with NASA and its predecessor organization dates back to March 28, 1956, at which time Mr. Burton entered on the rolls as an Intern. He progressed steadily from GS-5 until he became a GS-14 on March 3, 1963, which grade he held at the time of removal.

An earlier appeal within NASA was pursued under the provisions of Part 771 of the Civil Service Regulations. The decision on that appeal was issued July 26, 1968 and the instant appeal was filed within the time limit allotted by regulation. A hearing was held in connection with the agency appeal and a further hearing before a Commission Hearing Examiner was held on January 14 and 17, 1969. At the latter Mr Burton was represented by Mr. Murtha and the agency was represented by its Associate General Counsel, Mr. Matthew McCartin. A verbatim transcript of the hearing was prepared. Written briefs were submitted by attorneys for both sides during February 1969.

ANALYSIS AND FINDINGS

Procedures

The advance notice of proposed removal was issued on February 13, 1968, by Mr. Henry F. Thompson, Deputy Assistant Director For Manned Flight Support, based on a charge of "Refusal to carry out official assigned job for the period January 11, 1963, through the date of this notice." The reasons for this charge were set forth in considerable detail as follows:

"1. On November 17, 1967, you were detailed to the Office of the Assistant Director for Manned Flight Support. On December 6, 1967, you were given the assignment of developing a system of Management and Information Control for the Manned Flight Support Directorate. This required that you provide the necessary engineering management data in the following three areas: financial, personnel, and facilities. On January 10, 1968, you indicated to me that you would no longer perform the assignment of developing a system of Management and Information Control for the Manned Flight Support Directorate.

"2. On January 14, 1968, you were officially reassigned to the Office of the Assistant Director for Manned Flight Support. On January 19, 1968, a meeting was held in my office. In attendance at this meeting were myself, Neil Stein of the Manpower Utilization Division, and you. The purpose of this meeting was to discuss your refusal to carry out the assignment given to you by me on December 6, 1967. At this meeting, you were given a copy of your reassignment Form 50 and a current position description. You were also asked if you intended to do the job assigned to you on December 6, 1967. You indicated that you did not intend to do the December 6, 1967, assignment; however, you requested and were granted five days to study the position description and render a final decision.

"3. On January 24, 1968, a meeting was held in my office. In attendance were myself, Neil Stein, and you. At this meeting, you advised me that you would accept the assignment I gave you on December 6, 1967, only if all of the following five criteria were met: a. A private office with outside exposure. b. A private secretary. c. An adequate telephone system. d. A periodic step increase. e. A promotion to GS-15, step 2, by June 1968.

"You were advised by me that your request for a private secretary and private office with outside exposure could not be met. In addition, a recommendation for promotion to a GS-15 could only be considered after I had personally reviewed your work over a period of time. You were further advised that a periodic step increase would be reviewed at the appropriate time and a decision to grant or not to grant would be made then. I also advised you that I would investigate the telephone situation to determine if any changes were necessary. You were once again asked if you intended to accept the assignment you were given on December 6, 1967. You answered in the negative indicating that you would only accept the assignment if all the five criteria were met; you also indicated that you would not accept any other assignment at the Goddard Space Flight Center unless these five criteria were met.

"Your refusal to accept the December 6, 1967, assignment and the fact that you were not performing any other duties officially assigned by me left me no choice but to assume that you wished to be put in a non-pay status. Thus, I advised you that at close of business on January 24, 1968, you would be placed in a 'Leave Without Pay Status.' You have been in this status since that date.

"In spite of being put on Leave Without Pay, you continued to come to the office. On January 25, 1968, you were observed reading magazines at your desk. In order to determine why you were reporting to the office, yet not performing tasks I had assigned to you, a meeting was held in my office on January 26, 1968. In attendance were myself, Neil Stein, and you. At this meeting, you were asked if your coming to the office implied that you were accepting the December 6, 1967, assignment. You indicated that it did not and your purpose in coming in was to continue doing the same thing you had been doing for the last seven years. You were also asked at this meeting to read and acknowledge a memorandum which summarized the previous meeting of January 24, 1968. After reading the memorandum, you acknowledged its validity but refused to acknowledge same by signing. When asked once again if you intended to accept the December 6, 1967, assignment, you replied in the negative.

"In view of your continued refusal to do the assigned work and your failure to justify your presence at Goddard and in view of the fact that you were in a 'Leave Without Pay Status,' you were advised by me that it was not necessary for you to physically report to the office until such presence was requested by me. You indicated that you would continue to report to the office.

"In view of your refusal to accept and perform the assigned work, I have no alternative but to propose your removal from the Federal service."

It is found that the reasons for the proposed removal were set forth with sufficient specificity and detail to permit the opportunity for reply.

Mr. Burton was allowed a reasonable period of fifteen days from receipt in which to reply in person and/or in writing and to submit affidavits in support thereof. He was told that he would be retained "in an active duty status pending final decision of the proposed removal" but that for pay purposes "you will be carried in a leave without pay status." Also, he was informed that he would be paid for any time spent in preparing his reply to the proposal or in performing the assignment given him on December 6, 1967.

A written reply dated February 28, 1968, was submitted along with attachments comprising some fifty pages of material. Oral replies were made to Mr. Thompson on March 13 and 15, 1968. The decision was issued by Mr. Thompson on March 26, 1968. In the latter he said that he had given careful consideration to the written reply and attachments and to the oral replies; that he found the charge and the reasons stated in the numbered paragraphs 1, 2, 3 and 4 of the proposal letter were supported fully by the evidence; that the charge was further supported by the fact that from the date of the proposal to the present appellant had continued to refuse to carry out the duties officially assigned to him on January 11, 1968: that it was his decision to remove Mr. Burton from his position effective March 29, 1968; and that within fifteen days of that date appeal could be made to the Commission or to the Director of the Center. Mr. Burton elected to appeal initially within the agency.

Mr. John F. Clark, Director, Goddard Space Flight Center, issued his appellate decision on July 26, 1968, sustaining the removal action, and advising Mr. Burton of his right to appeal further to the Commission.

In his reply appellant alleged that the forced leave without pay after January 24, 1968, was tantamount to suspension. He cited provisions of Goddard Management Instruction (GMI) 3630.5 and Subchapter S-12 of Chapter 630 of the Federal Personnel Manual to the effect that leave without pay was a form of leave granted upon the employee's request and asserted that he was placed on such leave involuntarily. In the agency appellate decision he was informed that he was not ready and willing to perform his assigned job and hence properly was placed on leave; that instead of leave without pay he should have been placed on annual leave; that his leave account had been reconstituted and he would be placed on annual leave from January 25 through February 13 except for days during which he attended official meetings during regular duty hours: he would be constructively returned to active duty during the period February 14, 1968 through March 29, 1968.

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"A private office must be provided on the periphery of the building where some degree of quietness and outside visibility are available. A secretary must be provided in close proximity who would take direction from the writer first and everyone else second. Proper telephone service must be provided so that one is not desk-bound in order to receive incoming calls. On this point, it was stated that such a condition, in and of itself, caused undue stress and waste of manpower when a productive worker was constrained in this manner. That my in-grade salary increase become effective as soon as the two-year period expires, i.e., by the end of February 1968. That I be recommended and promoted to the proper GS-15 level, effective no later than 30 June 1968. That conditions be provided whereby a reasonable and proper relationship would be developed between the writer, his supervisor, and other working elements of the Directorate."

Mr. Burton wrote that Thompson said Burton's requests were unreasonable and that Burton should take the assignment and put everything he had into it so that Thompson could see for himself; that he told Thompson he had done this on previous occasions and provided Thompson with "what I considered exemplary performances while subjected to environmental conditions which were both intolerable and near impossible to perform under;" that he said that Mr. Thompson "should not feel discriminated against because the conditions for job acceptance were applicable to any other job offer, since I felt that I had earned the right to make such requests."

It is noted that Mr. Burton specifically identified the first three of his conditions as being a "must;" that the next three conditions were worded unequivocally, without being called "musts;" and that in paragraph 5.2.1.3 Mr. Burton said "It should be noted that the writer is doing just as he is suggesting when he refuses any further work assignments until such time as a complete performance appraisal has been rendered him for objective comparison with his own."

At the Commission hearing (page 223) Mr. Burton said he recalled having said at the agency hearing that he had not refused to perform an assignment in January 1968; that he had no assignments; and that Thompson tried to get him to perform a job he had given appellant earlier "Without any visible means of accomplishing it in two days." Mr. Burton also attempted to establish by his testimony that the first five conditions he set forth were "fringe-type things" which he brought up to try to get Mr. Thompson to recognize the real issue. He indicated that the real issue was getting Thompson to appraise him and to get Thompson to discuss job potentials with him and that they were not put there in an attempt to coerce Thompson in any manner.

In substance, Mr. Burton's contentions are that he had been an outstanding employee at Goddard and at Wallops Island, being promoted to GS-14 as the result thereof; that after the program had been set up to the point it could be managed routinely he was placed in a staff position but not given a regular job to do; that he had no assignments and was without active and productive relationships with officials and supervisors; that these matters culminated in events concerning the assignment given him on November 22, 1967 and the subsequent happenings of January 10, 19 and 24, 1968.

On the basis of the above, it is found that Mr. Burton did, in fact, refuse to carry out his officially assigned job starting on January 11, 1968, as charged. This leaves for consideration only the mitigating factors alleged by Mr. Burton and the amount of weight to be assigned to them.

The record reflects that Mr. Burton was aware of the existence of grievance procedures whereby he could have contested the propriety of his treatment during the two year period he alleges he was under utilized and ignored by management. It was asserted on his behalf that he did not invoke those procedures out of loyalty to the organization. He and his attorney claim that the declination of the assignment involved in the basic charge was for the purpose of raising the issues involved in his grievances and to force management to initiate corrective action.

Little weight can be given to these arguments. Mr. Burton could have instituted grievance procedures and could have the merits of his contentions reviewed by management prior to the time he declined the assignment. He could have invoked them at the time he was placed on leave. He could have invoked them at any time up until the decision was made to remove him. In his own self interest he should not have placed himself in jeopardy of losing his position solely for the purpose of bringing his complaints to light when he could have accomplished that without direct affect on his job.

Mr. Stein testified that he suggested to Mr. Burton that Mr. Burton avail himself of the grievance procedures but that appellant "indicated he saw no need to discuss the matter with me or with anyone else in the personnel office." (page 76-agency)

Mr. Stein stated that he inquired if Burton had spent any time thinking about this and that Burton indicated that he had thought about it and that his refusal was a considered decision.

Raymond J. Sumser, Chief, Manpower Utilization Division, testified at the agency hearing that he called Burton to his office on February 6, 1968 and suggested that Burton might utilize grievance procedures. He said he pointed out that the course of action taken by Burton could cause damage to his career and that the conditions set by Burton were unreasonable under the circumstances (agency 153).

Based on the testimonies of Messrs. Stein and Sumser, it is found that Mr. Burton knowingly refused to avail himself of grievance procedures to air his complaints against management. Hence, little weight is assigned to his allegations of improper treatment as mitigating against the sufficiency of the reasons for his removal. Other mitigating factors covering his prior record of satisfactory or better service and his length of service also have been considered. Collectively, however, it is found that the mitigating factors are insufficient to outweigh the seriousness of the sustained charge.


Reviewing the record as a whole, it is found that the decisions to initiate and effect the removal action were not arbitrary or capricious under the circumstances and that therefore the removal was accomplished to promote the efficiency of the service.

RECOMMENDATION

It is recommended that the National Aeronautics and Space Administration make no change in its personnel action removing Mr. Burton from the service on March 29, 1968.

This recommendation becomes a final decision of the Civil Service Commission unless the appellant files an appeal in duplicate with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415, within fifteen (15) calendar days of receipt of this decision.

Section 772.307 of the Commission's regulations provides that such an appeal must be in writing setting forth the basis for the appeal. Since there is no further right to a hearing, additional representations (if any) should be made in writing and submitted in duplicate with the appeal to the Board.


James T. Masterson, Chief
Appeals Examining Office

Enc: CSC Form 942
To Appellant

(From Part A, Adm. Record CSC, page 84)

UNITED STATES CIVIL SERVICE COMMISSION
BOARD OF APPEALS AND REVIEW
Washington, D. C. 20415

DECISION

IN THE MATTER OF

)
)
) TYPE CASE: Removal
)
)

Walter G. Burton

INTRODUCTION

By letter dated April 22, 1969, Mr. Donald M. Murtha, in behalf of Mr. Burton, submitted an appeal to the Board of Appeals and Review from a decision issued by the Appeals Examining Office on April 7, 1969. In that decision the Appeals Examiner sustained Mr. Burton's removal from the position of Aerospace Technologist, Technical Management, GS-14, \$17,425 per annum, National Aeronautics and Space Administration, Greenbelt, Maryland, effective March 29, 1968.

STATEMENT OF THE CASE

According to the record, on February 13, 1968, Mr. Burton was notified of a proposal to remove him for "Refusal to carry out official assigned job for the period January 11, 1968, through the date of this notice." The appellant replied to the notice by letter dated February 28, and on March 13 and 15 he discussed the charges with agency officials. On March 26, he received the agency's letter of decision to remove him, effective March 29, 1968.

The record shows that the appellant was carried in a leave without pay status from the close of business on January 24, 1968, until the date of his removal.

Mr. Burton's letter of appeal to the agency is dated April 8, 1968. A hearing was held on May 14, and on July 26, 1968, the agency issued a decision sustaining the removal action, and finding that the agency acted properly in placing Mr. Burton on leave on January 24, 1968, but that the appellant should have been placed on annual leave rather than leave without pay, until the appellant's annual leave was exhausted.

FIRST LEVEL DIVISION

On August 5, 1968, the Appeals Examining Office received Mr. Barton's letter of appeal, dated August 2, 1968, and a hearing was held on January 14 and January 17, 1969. The Appeals Examiner, in his decision of April 7, 1969, sustained the removal on the grounds that it met the procedural requirements of Civil Service regulations and was taken to promote the efficiency of the service; the Appeals Examiner also found that there had been no improper suspension from January 24 through March 29, 1968, because Mr. Barton had not been willing to work at that time.

REPRESENTATIONS TO THE BOARD OF APPEALS AND REVIEW

Mr. Barton's letter of appeal was received by the Board of Appeals and Review on April 23, 1969, and his two briefs, submitted through his representative, were received on April 23 and June 9. In these briefs, it was alleged that:

- 1) Mr. Barton's promotions, performance ratings, and step increases, as well as testimony given by other agency employees, shows that he "performed in a highly successful manner for a good number of years";
- 2) the appellant's supervisor refused to discuss the appellant's dissatisfaction with his work situation;
- 3) the agency and the Appeals Examiner had failed to consider fully the appellant's answer to the agency's charges;
- 4) the charge that the appellant refused to perform his official assignment is false because no official assignment had been made, and he was not given a position description until January 24, 1968;
- 5) the appellant filed a grievance by memorandum dated May 19, 1967, and the agency "had a duty to resolve it";
- 6) the agency violated its regulations by failing to discuss with the appellant the performance requirements of his position;
- 7) the events of January 1968 constituted "grievance action" rather than insubordination;
- 8) the Appeals Examiner failed to give full consideration to the appellant's charge that the agency violated its regulations by placing the appellant on leave without pay without his consent;
- 9) the removal "was prompted by bias, malice and prejudice", and was therefore arbitrary and unlawful;

10) the agency violated 5 U. S. C. 7501 and 7512, the Federal Personnel Manual, and the agency's regulations as follows:

a) the appellant was removed "for all practical purposes" on January 24, 1968, when he was placed on leave, and he therefore was not given proper notice prior to this date;

b) shortly after the appellant was placed on leave, his step increase was denied for the same reasons given for his subsequent removal--"thus appellant had already been disciplined for the alleged failure to accept an assignment";

c) the statement of the appellant's supervisor in January that the appellant's position description probably would not support a grade GS-14 was, in effect, a downgrading without the procedures required in 5 U. S. C. 7512;

d) the agency's charges "are not lawfully adequate" because they do not refer to any law or regulation which the appellant violated;

e) the appellant should not have been removed for requesting a performance evaluation because the agency had violated the requirements of its own regulations and the Federal Personnel Manual by failing to discuss the appellant's performance;

f) by placing the appellant on leave without pay when he did not request this leave, the agency violated subchapter 12 of the Federal Personnel Manual's chapter 630, "and there is no authority in the statute or in the regulations for expanding an unlawful action into a lawful discharge";

g) the removal violated agency regulations, chapter 751 of the Federal Personnel Manual, and 5 U. S. C. 7501 and 7512 in that "it was taken without a full consideration . . . of 'all factors involved' when deciding what penalty is appropriate including not only the gravity of the offense but such other matters as the existence of mitigating circumstances, the frequency of the offense and whether the action accords with justice in the particular situation";

h) the appellant did not voluntarily refuse his assignment ("the facts . . . indicate . . . that the appellant was forced to condition acceptance in January 1968 because of the pressure of management");

1) the "punishment" of removal is "harsh and unwarranted and contrary to standards of discipline promulgated by the agency" which sets the penalty for failure to carry out work assignments at reprimand and up to five days suspension for the first offense.

By letter dated May 14, 1969, the agency submitted a brief to the Board of Appeals and Review, in which it was alleged that:

1) the transcripts of the agency and Commission hearings show that the appellant had refused to perform duties assigned to him prior to January 1968;

2) the agency hearing transcript shows that the agency did call as witnesses four people the appellant alleged had not been called;

3) the Appeals Examiner, contrary to the allegations of the appellant, did not prohibit testimony of Mr. Youngblood and Mr. Graves (employees of the agency);

4) the appellant's allegation that he was "isolated" in his job is not supported by the record;

5) the Appeals Examiner and the agency did consider the appellant's reply to the agency's charges;

6) the appellant did receive an assignment on January 11, 1968, that was a "full time job for a considerable period of time";

7) the appellant's supervisor discussed the appellant's request for improvements in his work situation;

8) the appellant's allegation (in the first of the two briefs submitted to the Board) that he filed a grievance with the agency contradicts his testimony at both hearings that no grievance was filed;

9) the agency had made the performance requirements of the appellant's job clear, and had provided the appellant with a new position description to make sure that there was no question about the assignment;

10) the appellant's refusal to perform his assignment constitutes insubordination;

11) the Appeals Examiner did consider the appellant's allegation that the appellant should not have been placed on leave without pay without his consent;

12) there is no evidence to support the appellant's allegation that his removal "was prompted by bias, malice and prejudice";

13) the agency's actions were not unlawful;

14) the appellant's alleged insubordination was not forced.

ANALYSIS AND FINDINGS

The Board of Appeals and Review has made a careful and complete review of the record, including subsequent representations to the Board made by both the appellant and the agency. Although there is evidence in the record to show that the appellant has performed well in the past, the Board concurs in the decision of the Appeals Examining Office that the evidence in the record supports the agency's charge of "Refusal to carry out official assigned job for the period January 11, 1968, through the date of this notice." Evidence in the record, including both the agency's letter of decision to remove the appellant and the Appeals Examining Office's decision of April 7, 1969, show that consideration was given to Mr. Barton's responses to the letter of charges and his dissatisfactions with his work situation. The record also shows that, although the appellant's most recent position description was not given to him until January 24, 1968, he understood on January 11, 1968, the assignment which had been given to him.

Although the "grievance" memorandum of May 19, 1967, is not clearly identified, the Board assumes that this is the memorandum of that date addressed to Mr. Tecwyn Roberts; the subject heading of the memorandum is "Response to Reference Memorandum", and the memorandum contains no mention of a formal grievance. It is noted that Mr. Barton's testimony at the agency and Commission hearings indicates that he did not file a grievance. The Board believes that the appellant's refusal to perform his work in 1968 was not an appropriate substitute for a formal grievance.

Because Commission regulations provide that a within-grade step increase should be given only to employees whose work is of an acceptable level of competence, failure to give such an increase is not a disciplinary measure; there is no reason why the agency could not withhold Mr. Barton's step increase for the same reasons on which his subsequent removal was based.

The record does not show that the appellant was downgraded in January 1968, or that the cause of his removal was his request for a performance evaluation.

The Commission's regulations do not require that a letter of charges refer to a violation of any specific law or regulation. The Board concurs in the decision of the Appeals Examining Office that charges in the letter of proposed removal were given in sufficient specificity and detail to allow the appellant to reply.

Although the appellant has alleged through his representative that the agency's maximum penalty is five days for the first offense of failure to carry out work assignments, the Board feels that deliberate refusal

to perform work over a period of more than two months is more serious than a simple failure to carry out an assignment, and that a penalty of removal is not excessive in such a case. It is noted that there is a statement at the top of the agency's "Table of Disciplinary Offenses and Penalties" that "In unusual circumstances, depending on the gravity of the offense, the past record, and the position of the employee, a penalty either more or less severe than the MAX or MIN range, provided for herein, may be imposed."

The record does not indicate that Mr. Burton's refusal to perform assignments was involuntary.

The Board concurs in the decision of the Appeals Examining Office that the agency acted properly in placing the appellant on leave in January. This action was neither a suspension nor, as the appellant has alleged through his representative, a removal "for all practical purposes".

The Board finds no evidence of the "bias, malice and prejudice" alleged by the appellant.

DECISION

In view of the above, the decision issued by the Appeals Examining Office on April 7, 1969, sustaining the removal is affirmed.

Section 772.307(c) of the Commission's regulations provides that decisions of the Board are final and there is no further right of appeal.

For the Commissioners:

William P. Perzak

William P. Perzak
Chairman

June 27, 1969

(From Part A Adm. Record, CSC pages 3 through 9)

Appellant's Ex. No. 10

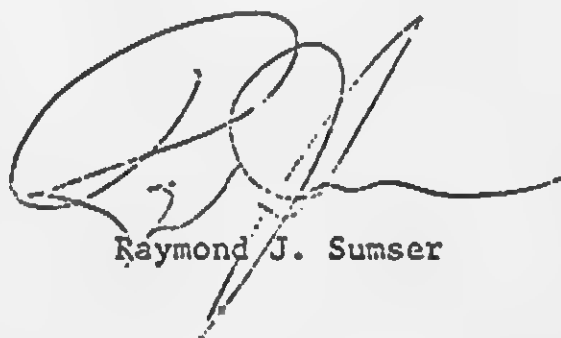
1/17/69

MEMO FOR THE RECORD

Met with Walter Burton late this afternoon to discuss with him his request to meet with Dr. Clark. Mr. Burton had indicated in his letter of March 20 that he wished to discuss his proposed removal.

Dr. Clark and I had talked earlier in the afternoon and the Director asked me to pass along his feelings about a meeting with Mr. Burton. I explained to Mr. Burton that the Director did not feel he should hold such a meeting at this time. Dr. Clark indicated, and I told Mr. Burton, he would be willing to meet on the following bases: (1) if there was a reasonable chance of something productive coming out of such a meeting. (Dr. Clark felt that meeting with Mr. Burton alone would expose only one side of the story and the only remedy for that would be to have all concerned present.) (2) If the meeting was, in fact, a result of Mr. Burton's appeal in this case. The Director would seek advice from us so as not to prejudice the case for or against Mr. Burton. (3) If Mr. Burton had already decided to go to the Civil Service Commission and to forego his right of appeal to the Center. Dr. Clark was willing to listen to Mr. Burton's views but not to attempt to resolve the issues at that time. Dr. Clark indicated he would have considerable pressure not to comment but that he would listen in such a case.

Mr. Burton acknowledged that he understood the Director's position.



3/27/68

Raymond J. Sumser

[This letter is p. 156 of Part B Appeal File 1, Administrative record of the Civil Service Commission]

Record

March 20, 1968

Deputy Assistant Director for Human Flight Support

Walter G. Burton

On March 13, Mr. Burton was invited to discuss his response to the letter notifying him of the intended action to remove him from the Federal Service. The discussion lasted approximately three hours and covered in a detailed fashion all of the events that occurred during his employment at the CTR. He stated that in every case his assignment to jobs had been followed by periods of frustration, lack of adequate support and final failure on his part to perform the function. He further stated that for the last several years that he really had not truly worked on a job and that most of his time had been spent in studying management literature.

He spent a considerable amount of time talking about his evaluation of himself and continuously referred to his position as a human organism in the adverse situation generated by management when he was assigned a job without the resources and authority of command he required to accomplish the job. Mr. Burton was asked several times during the conversation whether or not he was willing to attempt to perform the job he was assigned. In every case he emphatically stated that he would not, but that he felt that we should consider his personal relationships more important than productivity. Basically, there was no additional information obtained nor was there any difference in his position during the meeting.

Emory P. Thompson

cc: Mr. Benson - 1733

EFT/jh

[None found at p 64 of Civil Service Administration record
Part C: Appeal File 2]

Record

March 20, 1953

Deputy Assistant Director for Manned Flight Support

Walter G. Burton

Friday, March 13, 1953, Mr. Burton asked for a meeting during the afternoon which he stated would take only a few minutes to discuss a proposal which he desired to make. Mr. Burton was given an hour and a half, during which time he reiterated the information which was covered in the March 13 meeting and once again declined to perform the assigned job. Near the termination of the meeting, he proposed that he spend a several working day period and preparing material on management techniques and human relationships and that during the evenings and on weekends, whenever I could be available, he would present the material which he had prepared in order that I might better be able to understand and manage the human organism with the capabilities and potentials which he possessed. He stated that this would be a positive action rather than the negative action which would surely be detrimental to him if the request action was concurred. The meeting was terminated with the statement that I would carefully consider his comments and proposal and would advise him of my determination during the week of March 18.

Henry B. Thompson

cc: Mr. Genger - 1952.

HBT/th

*Enclosure found at p. 65 Civil Service administrative
record Part C: appeal file 2*

(From Part B Appeal File,
pages 97-100)

CERTIFICATION OF PERSONNEL ACTION

EMPLOYEE - See General Information on Reverse)

5 PART
50-124U.S. Civil Service Commission
FPMR (41 CFR) 255

(FOR AGENCY USE)

1. NAME (CAPS) LAST-FIRST-MIDDLE BURTON, WALTER G., JR.		MR.-MISS-MRS. Mr.	2. (FOR AGENCY USE) 1820	3. BIRTH DATE (Mo., Day, Year) 06-04-28	4. SOCIAL SECURITY NO. 231-26-0671
5. VETERAN PREFERENCE 2 1-NO 2-5 PT. 3-10 PT. DISAB. 4-10 PT. COMP. 5-10 PT. OTHER		6. TENURE GROUP 1		7. SERVICE COMP. DATE 10-12-52	8. PHYSICAL HANDICAP CODE 00
9. FTGLI 1 1-COVERED 2-INELIGIBLE 3-WAIVED		10. RETIREMENT 1 1-CS 2-FICA 3-FS 4-NONE 5-OTHER		11. (FOR CSC USE)	
12. CODE NATURE OF ACTION 721 Reassignment		13. EFFECTIVE DATE (Mo., Day, Year) 04-23-67		14. CIVIL SERVICE OR OTHER LEGAL AUTHORITY Reg. 335.102	
15. FROM: POSITION TITLE AND NUMBER AST, Tracking Station Management		16. PAY PLAN AND OCCUPATION CODE		17. (a) GRADE OR LEVEL 14	(b) STEP OR RATE 4
18. SALARY					
19. NAME AND LOCATION OF EMPLOYING OFFICE					
20. TO: POSITION TITLE AND NUMBER AST, Technical Management #4958					
21. PAY PLAN AND OCCUPATION CODE GS-1301.1		22. (a) GRADE OR LEVEL 14		(b) STEP OR RATE 4	23. SALARY pa \$16,675.00
24. NAME AND LOCATION OF EMPLOYING OFFICE NASA Goddard Space Flight Center, Tracking and Data Systems Directorate, Manned Flight Operations Division, Greenbelt, Maryland					
25. DUTY STATION (City-county-State) Greenbelt, Prince George's County, Maryland					26. LOCATION CODE 19 0710 033
27. APPROPRIATION		28. POSITION OCCUPIED 1-COMPETITIVE SERVICE 1 2-EXCEPTED SERVICE		29. APPORTIONED POSITION FROM: TO: STATE 1-PROVED-1 2-WAIVED-2	
30. REMARKS: A. SUBJECT TO COMPLETION OF 1 YEAR PROBATIONARY (OR TRIAL) PERIOD COMMENCING B. SERVICE COUNTING TOWARD CAREER (OR PERMANENT) TENURE FROM: C. DURING PROBATION D. FROM APPOINTMENT OF 6 MONTHS OR LESS SEPARATIONS: SHOW REASONS BELOW, AS REQUIRED. CHECK IF APPLICABLE:					
Class No. 770-30					
31. DATE OF APPOINTMENT AFFIDAVIT (Accessions only)		34. SIGNATURE (Or other authentication) AND TITLE Peggy A. Bickel Appointment Unit Supervisor DATE 04-28-67			
32. OFFICE MAINTAINING PERSONNEL FOLDER (If different from employing office)					
33. CODE EMPLOYING DEPARTMENT OR AGENCY NN31 AERONAUTICS AND SPACE ADMINISTRATION					

U.S. GOVERNMENT PRINTING OFFICE: 1963 O 703-278 \$16-0

BURTON, WALTER G. 4/67 RESS

POSITION RECORD

POSITION NUMBER
4958

2. NAME OF NASA ACTIVITY Goddard Space Flight Center		3. LOCATION Greenbelt, Maryland	
4. CLASSIFICATION			
POSITION TITLE		NASA CLASS CODE	
A. NASA TITLE	AST, Technical Management	770-30	
B. CSC TITLE		SERVICE	SERIES GRADE
		GS	1301.1 14

5. ORGANIZATION (Give titles of all organizational breakdowns in descending order)

Tracking and Data Systems Directorate

Manned Flight Operations Division

6. OFFICIAL POSITION CERTIFICATION

This is a complete and accurate description of position

TYPED NAME OF SUPERVISOR

Tecwyn Roberts, Chief, MFO

7. OFFICIAL CLASSIFICATION CERTIFICATION

TYPED NAME OF CLASSIFICATION SPECIALIST

G. E. Vaughan

DATE

SIGNATURE

3/24/67

DATE

SIGNATURE

4/17/67

B. DUTIES PERFORMED

SCOPE

1. Responsibility: As a management engineer, the incumbent is a member of the Division staff and is responsible for the development and application of management systems to the engineering and operation of the Manned Space Flight Network. As an assistant to the Division Chief and Assistant Division Chief, he renders whatever assistance they may require in carrying out their responsibilities. The incumbent draws upon previous engineering and management experience in the determination of projected needs in the areas of equipment, monies and manpower.

INDEPENDENCE

2. Supervisory Controls: The incumbent is responsible to the Division Chief and the Assistant Division Chief. His work in establishing new methods and procedures of engineering management is such that close supervision is not applied. His assignments are broad in scope, requiring personal initiative and judgement in their execution.

MAJOR DUTIES

1. Takes part in planning to determine for management the feasibility of

9. ANNUAL POSITION REVIEW (Audit) & CERTIFICATION					
SUPERVISOR	INITIALS				
	DATE				
CLASSIFICATION OFFICER	INITIALS				
	DATE				

proposed operations, engineering, and training. Such plans are generated in the various branches in response to the manned flight program requirements.

2. Monitors a half million dollar Division travel budget with emphasis on improved management control, economy, and cost projection for future years.

3. Accepts new requirements for and coordinates the effective utilization of the available office, laboratory and training facilities for both civil service and contractor organizations.

4. Conducts technical and budgetary studies to determine ability to augment and modify the Manned Space Flight Network sites within imposed cost and time constraints. These studies are aimed at providing the necessary management devices to direct and integrate the efforts of branches within the Manned Flight Operations Division as well as supporting contractors.

5. Responsible for objective/subjective appraisal of a variety of management plans, reports and technical documents either developed within or received by the Division.

6. Responsible for a continuous study of prudent ways and means to cut cost in all areas under his cognizance.

7. Directs the development of a proposed T&DS Comprehensive Program Plan which projects the requirements of the Manned Flight Operations Division for future years. Included in this plan will be an analysis of the current status of projects and the projected changes in level of effort required to provide proper and adequate mission support. In addition, consideration will be given to support requirements of missions which will be undertaken to extend the Manned Flight Program. The incumbent will accumulate the information necessary to support the proposals and arrange the plan in a form which is acceptable for presentation at the Assistant Director level.

8. Directs the development of combined financial and technical projections including cost, facility and manpower requirements consistent with management guidelines. He is expected to make technical and budget presentations at the Assistant Directorate level.

(From Part B Appeal File 1 pages 101-102)

100
 FORM NO. 2 (Rev. 10-1-64)
 U.S. Civil Service Commission
 GSA GEN. REG. NO. 27

NOTIFICATION OF PERSONNEL ACTION

5 PA
 50-11

(FOR AGENCY USE)

1. NAME (LAST, FIRST, MIDDLE) WATSON, VICTOR G., JR.		2. (FOR AGENCY USE) 1120		3. DATE OF BIRTH (Mo., Day, Year) 06-04-28	4. SOCIAL SECURITY NO. 231-26-1671
5. ADDRESS (STREET, CITY, STATE, ZIP) 1400		6. TELEPHONE GROUP 1		7. SERVICE CONTRACT DATE 10-12-62	8. PHYSICAL HANDICAP CODE 00
9. EMPLOYMENT 1-CONTINUED 2-REEMPLOYED 3-RECALLED 1		10. EMPLOYMENT 1-NEW 2-RECALLED 3-RECALLED 4-OTHER 1		11. (FOR CSC USE)	
12. CODE - NATURE OF ACTION 700		13. EFFECTIVE DATE (Mo., Day, Year) 01-14-68		14. CIVIL SERVICE OR OTHER LEGAL AUTHORITY 017, 016, 102	
15. FROM: (POSITION, TITLE, AND NO.) 54953		16. TO: (POSITION, TITLE, AND NO.) 54953		17. SALARY	
18. NAME AND LOCATION OF EMPLOYING OFFICE					

19. TO: POSITION, TITLE AND NUMBER 110, Technical Management 580080		21. PAY PLAN AND OCCUPATION CODE GS-1501.1 (24)	22. GRADE OR LEVEL 14/4	23. SALARY pa \$17,425.00
24. NAME AND LOCATION OF EMPLOYING OFFICE 1101 Collier Space Flight Center, Human Flight Support Directorate, Greenbelt, Maryland				

25. DUTY STATION (City-county-State) Greenbelt, Prince George's County, Maryland			26. LOCATION CODE 19 0710 (33)
27. APPROPRIATION	28. POSITION OCCUPIED 1-COMPETITIVE SERVICE 2-EXCEPTED SERVICE 1	29. APPROPRIATION POSITION FROM: TO: STATE 1-PROVED-1 2-WAIVED-2	

30. REMARKS: ☐ A. SUBJECT TO COMPLETION OF 1 YEAR PROBATIONARY (OR TRIAL) PERIOD COMMENCING ☐ B. SERVICE COUNTING TOWARD CAREER (OR PERMANENT) TENURE FROM: ☐ C. DURING PROBATION ☐ D. FROM APPOINTMENT OF 6 MONTHS OR LESS

SEPARATIONS: SHOW REASONS BELOW, AS REQUIRED. CHECK IF APPLICABLE: ☐ E. DURING PROBATION ☐ F. FROM APPOINTMENT OF 6 MONTHS OR LESS

Class No. 770-30

31. DATE OF APPOINTMENT AFFIDAVIT (Accession only)	34. SIGNATURE (Or other authentication) AND TITLE PEGGY A. BICKEL Appointments Unit Supervisor
32. OFFICE MAINTAINING PERSONNEL FOLDER (If different from employing office)	35. DATE 01-15-68
33. CODE EMPLOYING DEPARTMENT OR AGENCY NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	

BEST COPY
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BURTON, WALTER G. PRESS 1/68

POSITION RECORD

1. POSITION NUMBER

80088

2. NAME OF NASA ACTIVITY

Goldard Space Flight Center

3. LOCATION

Greenbelt, Maryland

CLASSIFICATION

POSITION TITLE

NASA CLASS CODE

A. NASA TITLE

AST, Technical Management

770-80

B. CSC TITLE

SERVICE

SERIES

GRADE

GS

1301.1

14

5. ORGANIZATION (Give titles of all organizational breakdowns in descending order)

Manned Flight Support Directorate

6. OFFICIAL POSITION CERTIFICATION

This is a complete and accurate description of position

TYPED NAME OF SUPERVISOR

Henry Thompson, Deputy Assistant Director

7. OFFICIAL CLASSIFICATION CERTIFICATION

TYPED NAME OF CLASSIFICATION SPECIALIST

Charles R. Brown

DATE

SIGNATURE

DATE

SIGNATURE

8. DUTIES PERFORMED

SCOPE

As a management engineer, the incumbent is a member of the Manned Flight Directorate Staff Office, with primary responsibility for the development of a system of Management and Information Control for the Directorate. The Manned Flight Support Directorate is a complex organization that is responsible for communication, command, tracking and data acquisition capabilities required by NASA's manned flight programs.

INDEPENDENCE

The incumbent reports to the Deputy Assistant Director for Manned Flight Support. He conceives and develops the necessary systems without supervision and his completed work is reviewed by conferences with his supervisor prior to presentations and subsequent debriefing sessions.

MAJOR DUTIES

The incumbent is responsible for the conception and development of Management and Information Control Systems which will provide the necessary engineering management data for top Directorate and Center Management to make decisions in the following areas:

AVAILABLE

bound volume

ANNUAL POSITION REVIEW (APR) & CERTIFICATION				
SUPERVISOR	INITIALS	<input checked="" type="checkbox"/>	OFFICIAL RECORD FILED	
	DATE	<input checked="" type="checkbox"/>		
CLASSIFICATION OFFICER	INITIALS	<input checked="" type="checkbox"/>		
	DATE	<input checked="" type="checkbox"/>		

2. Financial

The systems will provide information on the need for additional funding, the current rate of expenditures, the programs which have excess budgeted funds and the identification of functions or organizations which require the special attention of financial analysts.

2. Personnel

The systems will provide information on the manpower utilization practices of various subordinate organizations, particularly the use of highly trained, shortage category occupations, long range personnel needs, promotion and hiring practices and training requirements. It is also expected that the system will identify weaknesses in organizational structure.

3. Facilities

The systems will provide information concerning the status and condition of communications, office and laboratory space, data processing equipment, and other facilities throughout the Directorate.

After the Management and Information Control Systems have been approved, the incumbent is responsible for the implementation, evaluation and coordination of the systems to assure that they are being carried out effectively. He is also responsible for recommending changes and improvements in the systems to keep pace with the requirements of management.

The incumbent is personally responsible for the detailed development of the systems and for assuring that chart development and other clerical operations are produced on a timely basis.

4. Policies

The incumbent will be responsible for preparing policy memoranda for the signature of his supervisor.

The incumbent is responsible for assuring that the requirements of the Center's management information control system will be satisfied by the Manned Flight Support Directorate system.

[Found in Part A: Administrative Record p. 78-80]



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
LANGLEY RESEARCH CENTER
LANGLEY STATION
HAMPTON, VIRGINIA

IN REPLY REFER TO:

May 9, 1968

Mr. Ernest A. Neil, Code 400
Goddard Space Flight Center
Greenbelt, Maryland 20771

Dear Mr. Neil:

There is attached a statement concerning the work experience and performance of Mr. Walter G. Burton, Jr., while employed at Langley Research Center during the period March 1956 to June 1961.

As you know, this information was requested by Mr. Burton's attorney, Mr. Donald M. Murtha, in connection with an appeal from an adverse action. A copy of this statement has been sent to Mr. Murtha.

Sincerely yours,

Enclosure

cc:

Donald M. Murtha

Charles F. Barnett
Personnel Officer

TO WHOM IT MAY CONCERN:

The purpose of this statement is to provide information on the work experience and performance of Mr. Walter G. Burton, Jr., during his employment at the NASA Langley Research Center (formerly NACA) from March 1956 until June 1961.

Period From March 1956 until December 1959

From March 1956 until December 1959, Mr. Burton was assigned to the organizational unit identified as the Pilotless Aircraft Research Instrumentation Branch where he worked under the supervision of Mr. Harold H. Youngblood.

During this period Mr. Burton's assignments were concerned with the application of radio telemetering instrumentation systems to free-flight, rocket powered, research vehicles. He was initially assigned to work concerned with the development and application of transducers and FM subcarrier systems for telemetering but was quickly given assignments of increased scope since the senior engineer with whom he was working resigned and it was necessary for Mr. Burton to assume additional duties at a more rapid pace than might have ordinarily been expected. After approximately 12 months, he began to serve as instrumentation project engineer on assigned vehicles. In this capacity it was typical for him to plan the instrumentation systems, coordinate any necessary development efforts in other organizational units, and be responsible for the installation, test, and data reduction phases of a project. At any one time he was usually responsible for from 6 to 12 small vehicle projects which were in various stages of planning, design, or implementation.

Later he was assigned responsibility for the telemetry systems and certain control instrumentation during the development of the 4-stage Scout vehicle. Also during this period he was given a special assignment to assist in the improvement of facilities and techniques for the design and test of spacecraft antennas. While on this job he was responsible for the necessary new equipment procurements to improve the test facility and he made a significant contribution in the selection and use of alumina dielectrics to withstand the temperature caused by reentry heating on certain research vehicles.

During this period Mr. Burton performed with average technical ability for an electronics engineer with his training and education; however, he demonstrated a very high degree of initiative and industriousness. He was unusually interested in understanding and learning his job and frequently worked unpaid overtime in attempting to isolate a particularly difficult problem. In carrying out his assignments there were frequent instances where he exhibited a lack of tact in dealing with other personnel and thus some extra burden was placed on his supervisor. Nevertheless, his positive traits gained acceptance by his fellow workers and his overall performance is considered to have been above average. \

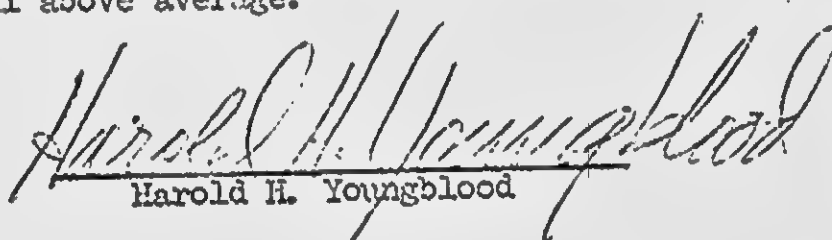
Period From December 1959 until June 1961

From December 1959 until June 1961, Mr. Burton was assigned to the organizational element identified as the Tracking and Ground Instrumentation Unit for Project Mercury where he worked under the supervision of Mr. George B. Graves, Jr. In this assignment Mr. Burton was responsible for planning and monitoring a major part of the test effort needed to verify the performance of tracking, telemetry, and communications equipment which was designed for installation at various ground stations located throughout the world.

Mr. Burton was initially responsible for planning the overall test program and technical direction of the prime contractor, Western Electric Company, Inc. in this area. As a result of this initial work, the test program was divided into one phase which involved a series of operational tests and development activities at the Wallops Island test site and a separate phase of test activities which required test and checkout at each of the individual ground stations. With the establishment of the Wallops Island test site, Mr. Burton was given complete responsibility for this phase of the work although he also assisted in reviewing test documentation and plans for the activities conducted at remote sites.

Mr. Burton was responsible for planning and monitoring the first complete tests which were made on each major subsystem. In many instances technical problems were encountered and it was necessary to develop field modifications or to revise operational procedures and documentation. He was personally responsible for making the necessary arrangements in establishing the Wallops Island test site, and for monitoring contractor activity during this phase of test program. In carrying out this work he conducted the necessary technical reviews using the assistance of NASA and contractor technical specialists in each area and played the key NASA role in coordinating the test effort which began with individual subsystem tests and progressed through complete integrated test of all the types of equipment which were finally installed at the Wallops Island test site. This work involved both laboratory type test programs and field exercises using instrumented aircraft for complete operational tests. The major systems involved included radar tracking equipment, UHF command systems, telemetry equipment, display equipment, and air-to-ground communications.

During this period Mr. Burton displayed outstanding initiative and drive in carrying out his assignments, and his technical ability and experience were important factors in effectively carrying out the test program. During much of the time intense schedule pressure existed and Mr. Burton's aggressiveness in identifying problems and contributing to timely solutions was very important. There were occasional instances where a lack of tact in dealing with other personnel was evidenced. However, considering the nature of the program and the very significant contributions made by Mr. Burton, it is considered that his performance was well above average.


Harold H. Youngblood

Commonwealth of Virginia
City of Hampton
~~State of Virginia~~


George B. Graves, Jr.

[Certificate of Service Omitted in Printing]

(Appellant Exhibit 12)

167 SUMMARY OF ALL RECORDS

DATE OF BIRTH: 10/10/1910

DATE: 8/20/68
 NAME (LAST): W. H.
 NAME (FIRST): W. H.

				Seen Self	Idealized Self	Self as Seen by Others	Self Acceptance	Insight (How you think others see you)
1.	resistant			4	7		6	
2.	imaginative			4	7		7	
3.	active			7	7		7	
4.	personable			6	5		6	
5.	brilliant			7	6		6	
6.	ideal			7	6		6	
7.	ambitious			7	6		6	
8.	cooper			6	6		6	
9.	adventurous			5	6		6	
10.	original			5	6		6	
11.	happy			5	6		6	
12.	kind			5	6		6	
13.	friendly			5	6		6	
14.	conscientious			5	6		6	
15.	lovely			5	6		6	
16.	active			5	6		6	
17.	constructive			5	6		6	
18.	imaginative			5	6		6	
19.	nerveless			5	6		6	
20.	cooperative			5	6		6	
21.	controlled			5	6		6	
22.	secure			5	6		6	
23.	calm			5	6		6	
24.	steady			5	6		6	
25.	direct			5	6		6	
26.	dominant			5	6		6	
27.	conventional			5	6		6	
28.	outspoken			5	6		6	
29.	talkative			5	6		6	
30.	congenial			5	6		6	
31.	persuasive			5	6		6	
32.	considerate			5	6		6	
33.	outgoing			5	6		6	
34.	trustful			5	6		6	
35.	sympathetic			5	6		6	
36.	friendly			5	6		6	
37.	proud			5	6		6	
38.	optimistic			5	6		6	
39.	democratic			5	6		6	
40.	stern			5	6		6	

32

43.3 = ave.
of 16

Rate 1-7 range between descriptive words.

Insight (44) Average insight. Aware of how others see you some of the time,
 (35-54) but more other times. Improving insight would make opinions
 effective.

Self Acceptance (32) Average or "Normal" You tend to be mentally healthy
 (25-45) in a general sense even if you have somewhat more
 short comings.

[From Part B: Appraisal File II]
 P. 167 - C.S. Adman, June 1957

14htf in the past to the Goddard effort. He stated that it was
2 not possible for him to perform the job and there were four
3 criteria given as to why he could not perform the job, that
4 must be met before, by Goddard, before he would perform the
5 job. One of these was an office by himself with some outside
6 exposure, so he could see out the window. He asked for
7 and actually a private secretary and a telephone system which
8 suited his requirements. He asked for assurance that an
9 increase promotion which would normally come up within a month
10 or two would be assured him. He also asked that we assure
11 him that he would be promoted to a GS-15 step 2 by June of
12 1961. And there was some discussion about what he felt to be
13 the justification for this and it was his past performance
14 while at Goddard.

15 I told him that some of these things which he
16 had asked for were completely outside of my control. I
17 certainly could make a recommendation for someone under my
18 supervision for a promotion but I do not actually have the
19 authority to grant the promotion. I felt that the office
20 that he was in was at least equivalent to the offices that
21 other people with the same type of position were occupying.
22 I was not familiar with the telephone system that he was
23 referring to. And because of the very tight restriction on
24 personnel and so forth, it would be unreasonable to expect
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16ht 1 knowledge had actually taken some leave without pay.. Of
2 course from day to day you do earn a few hours of leave, so
3 there could be a balance of a few hours. But it was essentially
4 a no leave status. So on January 25 we placed Mr. Burton on
5 leave without pay.

6 Q Did you at that meeting indicate what possible
7 consequences there might be if Mr. Burton continued?

8 A Yes, Mr. Stein pointed out to Mr. Burton that we
9 would have to take an action against him if he continued to
10 decline to do the job.

11 MR. MURTHA: What was the date of that?

12 THE WITNESS: January 24.

13 BY MR. MC CARTIN:

14 Q In this discussion on January 24 did Mr. Burton --
15 when Mr. Burton indicated there were certain criteria which
16 had to be met before he would accept the assignment, was there
17 any discussion of any other jobs? Or did he relate it only
18 to this assignment which was pending?

19 A No, as a matter of fact Mr. Burton had said that
20 he really felt that I shouldn't feel discriminated against,
21 that he would not accept any job at Goddard unless the criteria
22 had been met.

23 Q Thank you.

24 A On January 31 Mr. Burton wrote a memo to me
25 concerning the job description which we had given to him on

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He asked me what action was proposed and I informed him that we were preparing or proposing to give him proposed removal action. He asked some questions about Civil Service regulations at that time and terminated the meeting.

BY MR. MC CARTIN:

0 Did he refer again to the criteria which he had

I'm not really cognizant of his total past performance. I would not expect to give anyone a performance appraisal as someone who reported to me until I had the opportunity of personally observing their performance for a reasonable period of time.

Q So that again, no knowledge of the December 3 meeting which you speak of -- that or any other discussion in April, or in November, or in regard to his performance as reported with you and prior to the writing out of the letter of charges?

A I don't really think I can agree with you. Your interpretation here, sir, is that in everytime we had a meeting we were talking about his performance or his lack of performance, and were discussing his position and trying to get him to document it, to take his position or to change his mind, and to try another route rather than the outright refusal to perform a duty. I consider this a discussion of his performance.

Q Well, let me ask you this. Was there any job description available for Mr. Burton during the month of November and the month of December?

A We gave him a job description, a formal written job description -- let me get the date.

Q Let me refresh your memory. You had a meeting with him on the 10th or 11th of January, 1963. Do you recall

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1 had the right to go to my boss and say to him that I thought
2 I was being underpaid and overworked and all sorts of things
3 like that, and I felt that he owed me to listen to me say
4 these things, and that I could seek redress for a grievance
5 which I felt, but that I did not have the right to tell him
6 that I would not perform my assigned job, that if I used
7 this, then I felt that he should discipline me.

8 Now, this basic conversation took place twice and
9 if my memory serves me right, the first time was in the
10 January 28th meeting.

11 MR. NEIL: All right then, Mr. Thompson. We will
12 excuse you.

13 MR. MC CARTIN: I wonder if I could ask a few
14 questions on redirect?

15 MR. NEIL: Certainly.

16 REDIRECT EXAMINATION

17 BY MR. MC CARTIN:

18 Q I think Mr. Murtha can correct me, but in some
19 of his introductory questions he referred to Mr. Burton's
20 refusal to perform his assignments and I think he said he
21 casually refused. Would you care to comment on the phrase,
22 "casually refused?"

23 A Well, I don't know what he really means by casually
24 refusing. It was very specific and I questioned him very
25 carefully as to what he meant. I was quite shocked by this

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Mr. Burton indicated that he saw no need to discuss the matter with anyone with respect to discipline in the personnel regime. I also indicated to Mr. Burton that from the matter discussed at the meeting with Mr. Thompson it seemed that this was a grievance type situation and that possibly he wished to handle this under the normal grievance procedure, and once again I thought it would be best if he discussed this with myself or my superior, Mr. Davis, or with the personnel director, Mr. Eusey. And Mr. Burton indicated he saw no need to do this.

6 Did these discussions take place prior to February 18, the date on which the letter of charges was issued?

1 A Yes, the discussions were, as I remember, around
2 the January 10, 11, 12 and 13 area.

3 Q Were you concerned about Mr. Burton's career
4 in these discussions?

5 A Well, I am concerned about any employee's career
6 when I think he is doing something that might hurt him in
7 the long run.

8 I felt Mr. Burton had an avenue if he thought he
9 was not being treated fairly, that avenue being the
10 grievance procedure, and that refusal to do his assigned
11 task was not the way this matter should be handled. And
12 this was so indicated to him.

13 Q Were you present at meetings when Mr. Burton
14 indicated he would not continue to work?

15 A Yes, sir, I was present at either two or three of
16 these meetings. At one meeting Mr. Burton offered a written
17 transcript of what had been said at previous meetings and
18 in this written transcript he reiterated his refusal to
19 work.

20 Q Would you characterize the refusal as casual?

21 A No, I think it was a well-thought out refusal
22 that Mr. Burton felt was a proper decision on his part.
23 I believe I asked him on several occasions if he had spent
24 any time thinking about this matter, and he indicated he
25 had.

to have been a part of the flight.

Q Now, did you see the flight?

A Yes, sir.

Q Now, did you see the flight?

A Yes, sir. I saw it from the ground and,

and I saw it from the air. I saw it from the ground and from the air.

Q Now, did you see the flight?

A Yes, sir. I saw it from the ground and,

and I saw it from the air.

Q Now, did you see the flight?

A Yes, sir. I saw it from the ground and,

and I saw it from the air.

Q Now, did you see the flight?

A Yes, sir. I saw it from the ground and,

and I saw it from the air. I saw it from the ground and from the air.

Q Now, did you see the flight?

A Yes, sir. I saw it from the ground and,

and I saw it from the air.

Q Now, did you see the flight?

A Yes, sir. I saw it from the ground and,

and I saw it from the air.

Q Now, did you see the flight?

A Yes, sir. I saw it from the ground and,

and I saw it from the air. I saw it from the ground and from the air.

Q Now, did you see the flight?

A Yes, sir.

Q Were you for a time a branch head for Mr. Heller?

A Yes, I was.

Q What was the name of the branch?

A Manned Flight Operations branch, I believe.

Q Your field has been manned flight operations during these years?

A Yes, since I came to Goddard.

Q And before that?

A Well, before the manned space flight program I did my work with the Implementation Group at Langley, but primarily I was in the station implementation function.

Q By station implementation, you mean what?

A Well, the activities related to construction of facilities at the station, activities associated with the installation and subsequent operation of equipment at new stations.

Q Now during this period since 1955 -- and you can indicate when the period began -- did you know Mr. Burton here? Walter G. Burton?

A Yes, I first knew Mr. Burton when he came to work on the Mercury program at Langley.

Q At Langley?

A Yes. And --

Q Do you remember about what year?

A Well, I am a little bad on dates, but I think 1959.

Q Now when did Burton go to Langley, you say?

A Well, I don't know the exact date, but I think you would find it in the records.

Q And you were at the same time?

A Yes, I was at the same time, which was

the same time as the

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Q You have worked with Mr. Burton, have you, during

the 2 years?

A Yes, I worked perhaps more closely with him at

Langley than I have except on a couple of specific occasions

at Colcord.

Q Do you have an opinion as to Mr. Burton's

reputation for truth and veracity?

A Yes, I do have an opinion.

Q What is your opinion?

A Well, I have always found, in my dealings with

Mr. Burton, that he has been truthful.

Q Now the same question as to do you have an opinion with regard to his ability and qualifications, devotion to duty?

A Yes, I have an opinion on that.

Q What is that opinion?

A My opinion developed at Langley was of course that he was highly devoted to the task of developing a network for manned space flight. And on the tasks to which we were jointly assigned here at Goddard, I think I can say the same thing.

MR. MCNEIL: That is all.

MR. MC CARTER: No questions.

MR. NEIL: The Chair would have one question for you Mr. Wood. In relation to your statements of opinion as to the truthfulness and moral character, if you will, of Mr. Burton was the relationship at Langley or at Goddard between yourself and Mr. Burton professional or personal?

THE WITNESS: Only professional in both instances.

MR. NEIL: You are speaking from professional relationships then each time you answered those questions?

THE WITNESS: Yes, sir.

MR. NEIL: Was there ever in these professional relationships an employee-supervisor relationship between yourself and Mr. Burton?

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THE COURT: All right.

THE COURT: Is it all right for the State to ask
that you be sworn in as a witness in this matter?
You will be sworn in and you will take an oath of office.
You will be sworn in and you will take an oath of office.
You will be sworn in and you will take an oath of office.

THE COURT: Do you wish to be sworn in?

THE COURT: Do you wish to be sworn in?

THE COURT: Do you wish to be sworn in?

THE COURT: Do you wish to be sworn in?

THE COURT: Do you wish to be sworn in?

THE COURT: Now, if you wish to be sworn in, you
will be sworn in and you will take an oath of office.
You will be sworn in and you will take an oath of office.
You will be sworn in and you will take an oath of office.

(All are sworn in.)

THE COURT: Mr. Justice, do you wish to call another

witness?

MR. JUSTICE: Anybody, any one of these people.

MR. JUSTICE: Mr. Gardner then.

THE COURT: All right.

VIRGIL T. GARDNER

and called as a witness on behalf of the appellant and,
previously having been duly sworn, was examined and testified
as follows:

10ht

DIRECT EXAMINATION

Q MR. MARTIN:

Q Please state your name.

A Virgil Franklin Gardner.

Q Who are you employed by?

A Goddard Space Flight Center, in Flight Engineering Division, Engineering Support Branch.

Q When did you employ him at Langley Air Force Base?

A Yes, sir.

Q When was that in 1958?

A Yes, sir.

Q Did you know Mr. William G. Burton?

A Yes, sir.

Q Have you known him since 1958?

A Since August of '58 when I hired him.

Q What were you doing at that time?

A Well, I was mostly going through a training program for six months as, called a novice engineering and after that, the second six months, I was assigned to Project Little Joe and in relation to the programmer and the telemetry systems.

Q You say you hired Mr. Burton?

A No, I hired on at Langley.

Q Oh, you hired on?

A As an employee.

A Project Little Joe and Project Mercury, yes, sir.

I was assigned to the telemetry and display systems versus the ground stations and the Wallops demonstration site was the place where we of course developed our unit tests, our dynamic testing procedures, and we constantly looked for equipment flaws, which we found several and hence the connection at the demonstration site was my assigned task and hence my connection with Mr. Burton.

Q What is your grade now?

A Is that apropos?

MR. NUNN: Well, it is a valid question in the sense that the question has been offered to you and there is nothing improper about your answering.

MR. MC CARTIN: Management has no objection.

THE WITNESS: GS-14, sir.

BY MR. MURPHY:

Q During the period of the last couple of years, are you aware of any difficulties that Mr. Burton has had?

A So far as knowledge of specific details, I have no details so far as being shall we say directly involved. However, Mr. Burton and I have had unofficial discussions. I do know that about a year or two years ago, a year and a half or two years ago, that I saw he was very concerned, something had obviously happened, that he suddenly was shall we say a man not actively employed, kept busy I guess is the proper term, and as such he tried at that time to study

on 10-10-60, was not a supervisor --

Q. Now, if you were a supervisor, what would you do and him, you would not feel that he is a man not employed. Is that right?

A. That is right. I would be set up to that time when I was a supervisor, informed.

Q. And you would not be a supervisor in 1960?

A. No, sir. That is all.

Q. Now, Mr. Neill?

A. Yes, sir. I am not going to be technical. I am not a witness.

Q. Now, Mr. Neill, the Chair would ask you a question or two. You have stated under oath that you have known Mr. Burton for a considerable period of time both at Langley and at Goddard Space Flight Center?

A. Yes, sir.

Q. Now, Mr. Neill: Would this acquaintanceship be based on an employer-employee relationship or more on a personal basis?

A. THE WITNESS: I think I have been in Mr. Burton's house once in my life.

Q. MR. NEILL: So at any time were you supervisor to Mr. Burton or was he supervisor to you?

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THE WITNESS: I would say it was the other way

around. He was more my supervisor. In fact, while we were at Wallops Island, Mr. Burton for all intents and purposes was our supervisor.

MR. NEIL: So for that particular test, when you set up the telemetry station for Mercury at Wallops Station, Mr. Burton was in effect serving as your supervisor, is that right?

THE WITNESS: Yes, sir.

MR. NEIL: All right. Mr. McCartin?

MR. MC CARTIN: I think I would like to ask one question, if I may.

CROSS-EXAMINATION

BY MR. MC CARTIN:

Q With reference to the unofficial discussions you had you say a year or a year and a half ago, you stated you had the impression that Mr. Burton was not actively employed. Could you elaborate a little bit on how you formed this impression?

A Well, it is like knowing a man and working with him and during the Wallops period, or the Engineering Training Center as it later became known as, this man was busy constantly, running and doing. And it is in contrast, suddenly he wasn't.

Q When was this year or year and a half, was this in

Q. Now, did you see him at the time?

A. I don't think I could be specific. I can't.

Q. Did you see him at the time?

A. I don't know. I don't know.

Q. Now, did you see him at the time, with Mr. Burton?

A. I don't know. I don't know.

Q. Now, did you see him at the time?

A. I don't know. I don't know. I don't know.

Q. Now, did you see him at the time?

A. I don't know. I don't know. It seemed like he was.

Q. Now, did you see him at the time?

A. I don't know. I don't know. I don't know.

Q. Now, did you see him at the time, during this period when he was

Q. Now, did you see him at the time, during this period when he was

A. I don't know. I don't know. I have no direct knowledge

of him, particularly in any circumstances he had.

MR. TOLSON: That is all.

MR. TOLSON: Mr. Gardner?

MR. TOLSON: That is all.

MR. TOLSON: You may be excused, Mr. Gardner.

Thank you. You may go back to your office, but you are

subject to recall if we need you, but we will call you

independently.

(Witness excused.)

Whereupon,

NILES R. HELLER

was called as a witness on behalf of Appellant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MURPHY:

Q Could you state your name, please?

A Niles Roy Heller.

Q And you are presently employed by whom?

A By Goddard.

Q Where you originally at Langley?

A I was not.

Q Have you been with the Goddard Agency -- well, state since when.

A I am a charter member.

MR. NEIL: For the record, Mr. Heller, when did you come on board with Goddard? 1959?

THE WITNESS: '58 or '59, when the agency was formed. Transferred from NRL.

BY MR. MURPHY:

Q Then going back to '61, what was your position then?

A I had two positions in 1961. In the early part of 1961 I was Head of the Network Operations Branch under Jack Mangle. That was up until August of 1961, when I was

| Condition | Control (n=10) | MCI (n=10) | AD (n=10) |
|-----------|----------------|------------|-----------|
| A | ~90 | ~70 | ~50 |
| B | ~95 | ~75 | ~55 |
| C | 100 | 80 | 60 |
| D | ~90 | ~70 | ~50 |

When the trial is completed, there will be a
report given to all members of the League, which will need
justification in this regard to transfer to Goddard if they
are found.

✓ Recently arrived July.

A I did, I was trying to entice all of the experience that was available at Langley to come up for the opportunity that this program needed. For your record, I

think there were 17 of the original group transferred to Goddard.

Q If you recall, was Mr. Burton given a grade increase to Grade 13 when he came up? In June 1961?

A I think, yes, true.

Q After Mr. Burton received his first of his work under your supervision?

A That he did.

Q And that was on from June 1961 until when?

A Until June 1965.

Q Did you give Mr. Burton his performance ratings during that period?

A I did.

Q Do you recall whether it was satisfactory or not?

A Yes, they were.

Q And I believe sometime during that period Mr. Burton was given a grade increase to Grade 14.

A Well, speaking of that effort, I think I was responsible for getting him that raise. He became eligible and did a fine job of reactivating our station at Hollops Island as a training center. I recommended the raise at that time, and it was duly approved.

Q Now, in the period in which you were Mr. Burton's supervisor, do you recall his ever refusing an assignment?

A Never refusing.

... it is possible.

10. Q: Mr. Holler, the Chief would ask you a question in 1941-1942. How long certified that you were with Mr. Brown for his promotion to GS-18. At the time of that recommendation were you serving as Division Chief or Acting Chief?

Mr. JAMES: At that time I was Division Chief

MR. NEIL: At that time was Mr. Burton located in a division office or in the branch?

Q.11. WITNESS: He was on my staff, the division

1 office.

2 MR. NEIL: He was on your staff?

3 THE WITNESS: Yes.

4 MR. NEIL: Thank you. Anything else, Mr. Murtha?

5 MR. MURTHA: I can't recall if we asked you your
6 specific title at the moment.

7 THE WITNESS: At the present time, I'm Chief of
8 the STADAN Engineering Division here at Goddard.

9 MR. MC CARTIN: I do have just one question.

10 CROSS EXAMINATION

11 BY MR. MC CARTIN:

12 Q I guess I'm intrigued by your answer, "very good
13 in selected areas." Could you amplify that a bit for us?

14 MR. NEIL: This is in relation to the question of
15 how you found his work performance, I believe.

16 MR. MC CARTIN: Yes.

17 MR. NEIL: Very good in selected areas, yes.

18 THE WITNESS: All right, I will amplify that
19 further. When Mr. Burton came to us he took on, as I said,
20 the reactivation of the Wallops Island station which was
21 a quite sizeable task. He was the only government employee
22 there. The responsibility for the maintenance and reactiva-
23 tion of course was performed by contractors.

24 He had terrific success in this, in his ability to
25 direct the contractor, this was turned over to the Operations

Division. He came back into the division, and did a fine job of going back in consultation with NASA Headquarters, to coordinate some of the original agreements with the Department of Defense and the California operation of the downrange sites.

Mr. NEIL: Did you say that? On the basis of this, I am sure that he would have come up with a plan, and the executive plan, for the Apollo. Now, in this activity, Mr. McCartin failed.

MR. NEIL: Would you explain for the record A.A.P.

THE WITNESS: Advanced Apollo Program.

MR. NEIL: In what way would you say he failed you?

THE WITNESS: His inability to work with other people under directorate orders such as I was, dragging him out, then it was necessary that I take him off here and the job was finished by a high level technician.

MR. NEIL: Mr. McCartin, you were questioning the witness.

MR. MCCARTIN: No further questions.

MR. NEIL: Mr. Martha?

MR. MARTHA: No further questions.

MR. NEIL: All right. Mr. Heller, you may be released. Thank you. You are subject to recall if we need you. However you may now return to your own office,

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and we will call you by phone. Thank you.

(Witness excused.)

Whereupon,

FRANCIS I. GLYNN

was called as a witness on behalf of Appellant, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MURTHA:

Q State your name, please.

A Francis I. Glynn.

Q You are employed where?

A Goddard Space Flight Center, employed by the U. S. Government, NASA.

Q Have you been employed by the same organization since -- since when?

A I joined the old NACA in 1948, and was with NACA during the changeover in 1953 to NASA, continuous employment.

Q During this time did you get to know a Walter G. Burton?

A Yes, sir.

Q How did you happen to know him?

A I met Glen as I call him, excuse me, I have been knowing him for years as Glen Burton, I believe he came to work sometime in 1956. At that time I was working in control

He got out of the jail about this time. He
was still afraid of going to work then as I saw him
going regularly to the building and he gradually worked into
the work. Since then the life has been a personal
affair.

Q Are you an engineer?

A My job title is an engineer technician.

Q What is your opinion as to the work qualifications of Mr. Burton?

A As to his actual professional ability, if I go back to 1956, I was impressed at that time of his quite capable ability in that line of work. I thought he was well versed in his business. At that time it appeared to be better than the average of the engineers working, the people I worked with on equal projects or similar projects.

1 Since then, Glen and I haven't worked on similar projects
2 or been closely associated in similar programs, so I don't
3 think I could actually say firsthand of his abilities.
4 I have seen his rise in NACA-NASA, which is indicative of
5 a man's superior ability.

6 Q Is he a truthful and honest person in your opinion?

7 A Absolutely, sir. One of the most honest people
8 I know. And truthful.

9 Q Do you have any knowledge in more recent years
10 of any difficulties that he might have had with regard to
11 getting support for assignments?

12 A Yes, Mr. Burton has indicated to me during the
13 last couple of years that he has had problems communicating
14 with superiors. At one time he asked me to deliver a sealed
15 letter to his division chief who is a neighbor of mine, he
16 asked me to deliver it to his home, Mr. Robert's home,
17 which I did.

18 He indicated to me he had been unable to contact
19 Mr. Roberts during the day and would like for him to have
20 that letter before the day was over.

21 MR. MURTHA: That's all.

22 MR. MC CARTIN: No questions.

23 MR. NEIL: Mr. Glynn, the Chair would ask a couple
24 of clarifying questions. In your relationship with Mr.
25 Burton, at Langley, that you spoke of in your testimony,

Q Now you were a technician?

THE WITNESS: Yes, sir.

Q And you were a technician on engines?

THE WITNESS: Yes, sir.

Q And so your relationship, professionally, between you and Mr. Burton was, you're an employee of an employer, is that right?

THE WITNESS: Yes, sir. I was a technician at the time Mr. Burton was in the office. We worked on the same engine, and I was responsible for the integrity of the engine system. I didn't working for Mr. Burton. I was a technician on a different system.

Q Now, you were a technician in the old NASA or a "technician-engineering" level, as opposed to the "technician" level that was the level at Goddard Space Flight Center? I realize there was a time when the technician level engineering was the level more significant than it is now, and I wanted to bring that out.

THE WITNESS: Yes, sir. At that time I had a great deal of responsibility placed on me because of the character of the work.

Q Now, since that time you have testified that your relationship here at Goddard with Mr. Burton has been only on a personal basis.

THE WITNESS: Mainly, yes.

MR. NEIL: Do you consider yourself a good personal friend of Mr. Burton?

THE WITNESS: I would say one of Mr. Burton's closest personal friends.

MR. NEIL: Do you get together socially?

THE WITNESS: Yes, sir, many times.

MR. NEIL: Then I would guess you were not surprised when Mr. Burton asked you to deliver this sealed envelope to the neighbor?

THE WITNESS: No, not at all. This was quite normal.

MR. NEIL: This would be something you would expect in such a friendship?

THE WITNESS: Yes.

MR. NEIL: Any further questions Mr. Murtha?

MR. MURTHA: No.

MR. NEIL: Mr. McCartin?

MR. MC CARTIN: No questions.

MR. NEIL: You may be excused. You are subject to recall if we need you, but you may return to your normal place of business.

(Witness excused.)

App. 150

...the fact that the *in vitro* and *in vivo* results are in good agreement, and that the *in vivo* results are in good agreement with the results of the *in vitro* studies.

[illegible][illegible]

1
A. 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 26

11. NO OTHER: IF I COULD -- MY ATTENTION WAS
 DIVERTED -- I WOULD AS I WOULD LOVE THAT GOOD BOOK.

Consequently, the reference word the word, as
repeated.

10. NAME: ALL RIGHTS, MR. DE CARLIN?

HA. Ed. 045011: Vol. 50, p. 5002.

PL. IND. : Continued, 10. March.

BY MR. MURPHY:

Q What kind of a supervisor did Mr. Burton
later?

A An excellent supervisor. I have worked under Mr.
Burton in a training capacity, and not knowing the space
program in the beginning, it was towards the end of
January, 1966, and Mr. Burton took me in, and I recognize
as having the capability, and he put me through a terrific
training program, which in turn gave me, I think, a great
capability which I am able to -- have been able to utilize
throughout the past five years with the government.

Q What has been your relationship within the last
couple of years?

A It hasn't been a personal relationship, nor in
a working capacity in the past -- since '66. I want to
check my dates.

Right, since '66, '67 and the present, it hasn't
been a personal relationship, nor in a working capacity,
although we did work on one project which involved a
joint study program which Mr. Burton had experience in. And
he was assigned to help me in this one project which lasted
approximately a week or two weeks.

Q Are you a technician or an engineer?

A I am classified as a program manager.

Q Are you aware of any difficulties job-wise that

12. MR. TOLSON: That is all.

13. MR. CLEGG: No questions.

14. MR. TOLSON: Mr. Harbo, the chair would ask a couple
15 of questions first for my own illumination on what you have
16 said.

17 You stated, now, that from 1935, through the
18 years '37, '38 to the present time you have had no
19 professional relationship except for a brief period of two
20 or three weeks with Mr. Burton?

21 MR. HARBO: Right.

22 MR. TOLSON: And in this entire period of time, '35
23 through the present time, there has been no real personal
24 relationship between yourself and Mr. Burton?

25 MR. HARBO: No, sir. When I say personal --

26 MR. TOLSON: I mean personal friendship, going out
27 to --

28 THE WITNESS: Right, association in the evening, no
29 association whatsoever in the evening.

30 MR. TOLSON: You also testified that you had some
31 talks on problems in this same period of time, '35 through
32 '37?

33 THE WITNESS: Right, sir.

34 MR. TOLSON: Were these talks specific to the
35 content of the problems of Mr. Burton's, or were these
36 talks more on what I would call a couple of managers
37 discussing management-type problems in the hall?

THE WITNESS: I am not sure that I can say that the
 evidence is sufficient to show that the defendant was
 guilty of the crime charged. The fact that the defendant
 was in the vicinity of the crime at the time it was
 committed is not sufficient to establish guilt. It is
 necessary to show that the defendant was the person
 who committed the crime. The evidence in this case
 does not establish that the defendant was the person
 who committed the crime.

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 committed is not sufficient to establish guilt. It is
 necessary to show that the defendant was the person
 who committed the crime. The evidence in this case
 does not establish that the defendant was the person
 who committed the crime.

THE WITNESS: Yes.

MR. HILL: Now then would you try again for me --
 given you were discussing both aspects, would you render
 an opinion for me that you were more discussing specific
 problems of Mr. Burton rather than just course material
 or something.

THE WITNESS: Mr. Burton's and my discussion,
 if I say so an example, went in such a manner that we

discussed the reorganization of our management, we discussed the future problems that we might encounter. We discussed the past problems. We discussed, on various occasions, individuals within the organization. We also discussed our future.

And in discussing our future -- where do we, as individuals, stand in our organization since we are both within the same division -- we discussed possible job classifications that we may obtain throughout the organization -- reorganization.

And Mr. Burton in my discussion with him had no knowledge at all as to what the future may lead to in this reorganization that developed -- which has developed.

MR. NAIL: In that same discussion, in that same time period and in the same type of discussion you just outlined, did you personally have any knowledge of what would happen to you in the reorganization?

THE WITNESS: Right, sir, because I guess my knowledge, where my future was leading into the organization, I was sort of paving it at that time, and knowing it was going to be accepted, because I was working in that capacity, that was to be interwoven within the organization.

And in discussing those areas with Mr. Burton, I was surprised to find out he had no inclination of what the reorganization may develop in his future. And we discussed

Q Now, did you have any other discussions and possible litigation

with the aid of Mr. Harten?

A Yes, sir, I did have discussions.

Q Now, what was the nature of these discussions?

A Well, I don't know.

Q Now, did you have any other discussions with Mr. Harten or

any other person?

A Yes, sir, I did have discussions with Mr. Harten and with

other people.

Q Now, did you have any discussions with Mr. Harten on or about

1954, 1955?

A Yes, sir, I had discussions with Mr. Harten and with other

people in the office, but I don't know what the discussions were about?

Q I would be interested in the discussion that we had on the

10 and 11 March when you were probably around noon hour. I

thought Mr. Harten and Mr. Harten frequently brought his.

Q Would you say the only discussions took place

during the normal work hour lunch period?

A Well, you know, I have to say occasionally, you

know, even coffee.

Q Were in the office?

A Yes, sir, all in the office. All discussions were

in Mr. Harten's office or my office.

Q You indicated you were surprised to find out from

Mr. Harten that he had no knowledge of his future. Did

1 you find this out from Mr. Burton?

2 A Right, sir.

3 Q That is the basis of your statement, what Mr.
4 Burton told you?

5 A Right.

6 Q Would this take place -- could you indicate
7 roughly when you were supposed to find this out?

8 A Yes, I indicated to Mr. Burton.

9 Q Could you indicate roughly at what time this took
10 place? Was this in July of 1967, August of 1967, November 22,
11 1967?

12 A I am trying to relate the dates. I would say it
13 took place roughly three to four months before the
14 reorganization was official. It was in the planning stages
15 of the reorganization and toward the finalization.

16 Q Would you say there was any confusion during that
17 period?

18 A When you say confusion --

19 Q Well, would you say that during that period
20 everybody had a job description?

21 A I would say to my knowledge most of the people
22 did, the majority of the organization did. In fact, we
23 were able to review our job descriptions.

24 Q When did you get yours for this reorganization
25 which on paper, for payroll purposes, I understand took

Q Now, did you have any other information about

A Yes, I did. I had a list of names.

Q What?

A Names of people who were in the office in a certain

Q What?

A Names of people who were in the office in a certain

A Names of people who were in the office in a certain

Q What?

A Names of people who were in the office in a certain

Q What?

A Names of people who were in the office in a certain

Q What?

A Yes, sir, I did.

Q Did you ever find the experience that you could have to work without a job description?

A Yes, sir, I have found it. In fact, no job description fits perfectly any task you perform.

Q Would it surprise you if I told you that Mr. Thompson said earlier that the reorganization is still not complete and that at the time from July through December, 1957, many people did not have job descriptions, although they were working on them? Would that surprise you?

A That many people did not have job descriptions?

Q In his Directorate, yes.

A I am trying to get your question right.

Q My question is -- let me restate is.

A Please?

Q Do you dispute then the statement made earlier today by Mr. Thompson that during this period from roughly July of 1967 through perhaps the early part of 1968 many people in that Directorate did not have job descriptions.

MR. DEER: Mr. McMartin, I can't allow that question, because this witness has no way of knowing the testimony of Mr. Thompson.

MR. MC CARTIN: No, but I think on cross examination I can fairly summarize what was said and ask him.

MR. DEER: He is unable to dispute the previous witness because he has no knowledge of what it was. If you could restate your question.

MR. MC CARTIN: I am a little at a loss as to how to restate it, but I perhaps will think of some way.

BY MR. MC CARTIN:

Q Did you study management literature along with Mr. Burton?

A When you say along with -- we traded books.

Q Traded books? And you discussed past problems and future problems and what the future had in store for you?

A Right, sir. On occasions we did.

Q Is this unusual to discuss the past and the future in this way?

Q. Now, did you say that?

A. Yes, I did say that. I said that.

Q. And they were doing their duty in

the way that you described?

A. Yes, I think they were doing their duty in

the way that you described.

Q. Now, you said that you were not a technician.

A. Yes, I was not a technician. I was a

supervisor. I was a supervisor. I was a

supervisor. I was a supervisor. I was a

supervisor. I was a supervisor. I was a

supervisor. I was a supervisor. I was a

supervisor. I was a supervisor. I was a

supervisor. I was a supervisor. I was a

supervisor. I was a supervisor. I was a

A. Yes.

Q. Now, Mr. Martin, any further questions?

A. Yes, I have a few more questions.

Q. Now, I would like to come back to this job

description.

A. As far as I know, every man in the Federal Service had

a job description. Prior to the reorganization I am

entirely confident that every man in the Directorate had a

job description.

Q. Now, I interrupt at this point. I

realize this. The point I am making and the point I stated, I think, back there, whether Mr. Horton had a job description officially agreed on by his management or whether Mr. Horton had a job description that was discussed with him, I don't know this personally.

Q. NOW: Thank you. I am not questioning your knowledge of Mr. Horton's job description. At the time of the reorganization from tracking and data to the new directorate, Planned Space Flight, it has been testified that a great many people in the new directorate of Planned Space Flight were forced to start performance without a valid up-dated, corrected job description.

Q. As to the extent of your knowledge of that period of time, which was roughly July of '67, are you personally aware of a significant or large number of people in the new directorate performing without a job description, that is, an up-dated, corrected, valid job description of their new assignments in the new directorate?

A. THE WITNESS: I would say that probably a lot of job descriptions were out-dated, out-moded and weren't properly prepared and are still being prepared. The point --

Q. MR. NIEL: Fine. Then may I suggest that your previous testimony that most of the job descriptions were corrected and brought up to date might properly allude to the small group within the directorate to which you were

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

MR. BARTON: Thank you.

...the ... of the ...

MR. WHELAN: I was surprised that management ...

MR. BARTON: Thank you.

Mr. McGarvey?

MR. MC GARVEY: No questions.

MR. HAMIL: Mr. Murtha?

THE WITNESS: I would like to add one more thing.

MR. HAMIL: If you wish, you may add anything which I haven't been brought out as part of the questioning.

THE WITNESS: I would like to close with this one more thing. It seems to be significant. I was definitely surprised Mr. Burton did not have -- was not well tuned in on the reorganization, because of his management capability that had been utilized in the organization throughout his experience in the division.

So it did come as a surprise to me because many of us people in the line units had a good feel for what we were doing in the reorganization, so it did surprise me.

MR. HAMIL: You have testified in this period of time from '66 through '68 you had no professional relationship with Mr. Burton, so your feeling or belief that he was performing for the organization in some manner is only a matter of conjecture on your part? It is not based on knowledge or fact? So your surprise was based on, if I may put a word in your mouth, the assumption that Mr. Burton was performing for management in some respects. And, therefore, you were surprised that he was not aware of the extent, why's and wherefores of the reorganization?

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MR. NEIL: All right, Mr. McCartin.

MR. MC CARTIN: Then the answer stands?

MR. NEIL: Yes.

MR. MC CARTIN: I have no further questions.

MR. NEIL: Mr. Marsha?

MR. MARSHA: No questions.

MR. NEIL: Mr. Marsha, you may be excused and return to your usual line of business. You are subject to recall if we need you, but we will contact you directly.

Thank you.

(Witness excused.)

WITNESS: JAMES C. JACKSON App. 166

Q. Now, would you take a short recess at this

moment?

A. Yes, sir. I'll take the courtesy break
and be back in the hearing room at 2:55, with
any other witnesses, including, witness for the
prosecution.

Thank you, Mr. Jackson.

Q. Now, would you return to the hearing room of the Appellate, and
beginning at first only, review, examine and testify to
what you can.

Thank you, Mr. Jackson.

BY MR. WATKINS:

Q. State your name and position please?

A. My name is James C. Jackson. I am presently the
Head of the Logistics Management Office in the Tracking and
Data Systems Directorate.

Q. In 1958 where were you?

A. In 1958 I came to NASA and joined Langley Research
Center at Langley Field, Virginia.

Q. Beginning about that time, have you known Mr.
Walter G. Burton?

A. Yes, sir. I have. I knew Mr. Burton from the
very start of the Mercury program, and I'm familiar with his

work at Wallops Island, Virginia, where he was responsible for the testing and checkout of the Mercury network equipment there at Wallops. I'm familiar with the work he has done there and subsequent to that, I have been associated with him as a co-worker at both Langley and at Goddard Space Flight Center.

Q Mr. Harold H. Youngblood and Mr. Coates, who are at Langley, made a statement which has been put in evidence here, Appellant's Exhibit 1, which includes this statement: "During this period, Mr. Burton..." -- we are talking about Langley -- "during this period Mr. Burton displayed outstanding initiative and drive in carrying out his assignments and his technical ability and experience were important factors in effectively carrying out the test program. During much of the time a tense schedule pressure existed and Mr. Burton's aggressiveness in identifying problems and contributing to timely solutions was very important."

Would you agree with that statement?

A Yes, sir, I think that is a very accurate statement.

Q You were associated to some extent with Mr. Burton since that time up here at Goddard?

A Yes, sir.

Q What is your opinion with regard to whether or not he is a truthful and honest person?

A I don't think there is any question about that. I

just discussed, as his supervisor. And I would say as a friend I wouldn't want to know a better friend. He is a fine, compassionate individual, he has been very friendly to me, and he has helped me in a number of circumstances where I needed his help on a personal basis.

In the job of course, our relationship was strictly one of getting the job done. And in that capacity, Mr. Burton I think, for those jobs that he did, he did well and did thoroughly.

MR. MURTHA: That is all.

MR. NEEL: Mr. McGavin?

CROSS EXAMINATION

BY MR. MC GAVIN:

Q Mr. Jackson, when did you first come to know Mr. Burton, at what time in 1959?

A In November.

Q The affidavit which was referred to earlier by Mr. Murtha made by Mr. Youngblood, which is Appellant's Exhibit 1, he states on Page 3 with reference to Mr. Burton that in carrying out his assignments, there were frequent instances where he exhibited a lack of tact in dealing with other personnel and thus some extra burden was placed on his supervisor. Do you have any knowledge of whether that is correct or not?

A I have no personal knowledge where he exhibited

...and I think you would find that Mr. ... is ...

...and I think you would find that Mr. ... is ...

...and I think you would find that Mr. ... is ...

...and I think you would find that Mr. ... is ...

...and I think you would find that Mr. ... is ...

...and I think you would find that Mr. ... is ...

...and I think you would find that Mr. ... is ...

...and I think you would find that Mr. ... is ...

Q Now you are saying that I am ... in ...
...and I think you would find that Mr. ... is ...

A No, sir.

Q Will you clarify it please?

A I must speak positively now about Mr. Burton's
relationship with me in the job that he and I worked on in
the office. There are some jobs that Mr. Burton was asked
to do that in his mind at least he didn't think that he had
either the proper authority or the proper resources to do
his job. And in those kinds of jobs where he didn't actual

1 carry out what was asked of him he felt that he didn't have
2 the resources to do these tasks. And so, obviously, I
3 couldn't speak to those and say that he was devoted to those
4 tasks, if he did not have the resources to carry them out.
5 That is my inference and hesitation when you asked the
6 question on devotion.

7 Q If we could explore that a little bit, could you
8 indicate a little more precisely what jobs he was asked to
9 do which he didn't carry out?

10 MR. MURPHY: Just a moment. I don't think the
11 witness testified in exactly that way.

12 MR. MC CARTIN: When if we could, so there won't
13 be any further discussion, perhaps the reporter could read
14 back the statement made by the witness. I haven't heard
15 him object.

16 MR. NEEL: Would you read that back please?

17 (Record read.)

18 MR. NEEL: Now, would you restate your question?

19 MR. MC CARTIN: Yes.

20 BY MR. MC CARTIN:

21 Q Having heard the repetition of your testimony,
22 could you indicate what are these jobs you were referring to?

23 A All right. I will use as an example an assignment
24 that was given to Mr. Burton in connection with the budget,
25 when he and I were working for Mr. Roberts. In this

concerned. The Director has assigned the specific job of
 conducting the investigation to support our work
 in the field of the subject. And in this connection
 the Director has received by the
 Director's office a letter from the Director's office
 dated 10/10/61, which is a letter which is satisfactory

Q. Now, you said that the Director's office
 was the one that was responsible for the
 investigation of the subject. Now, you said that the
 Director's office was the one that was responsible for the
 investigation of the subject.

Q. Now, you said that the Director's office
 was the one that was responsible for the investigation of the subject.

Q. Now, you said that the Director's office
 was the one that was responsible for the investigation of the subject.

Q. Now, you said that the Director's office
 was the one that was responsible for the investigation of the subject.

A. No, I did not.

Q. That was one example. Do you have others?

A. No, I don't.

Q. Was it because of personal friendship that you
 accepted Mr. Bryant's statement that he didn't have resources?
 Did he have resources?

A. No sir.

Q. What other basis did you have as a supervisor for
 not checking out the point then, Mr. Jackson?

1 A I felt that there was a reason why Mr. Burton
2 didn't get the resources, other than the fact that the
3 office had assigned him to do the job. I feel that Mr.
4 Burton has had some difficulty in recent years in getting,
5 in soliciting and getting the kind of support he has
6 required to do some of the jobs that have been assigned him.
7 And those reasons for the lack of that support I don't
8 know what they are, but I know there was some lack of support.

9 Q And you can't think of other examples, although
10 there may have been others, is that your testimony?

11 A Yes.

12 MR. MC CARTHY: No further questions.

13 MR. NEEL: Mr. Murtha?

14 MR. MURTHA: No further questions.

15 MR. NEEL: Mr. Jackson, may I ask, as Chairman,
16 would you give me an illustration or a clarifying statement
17 as to what you mean by having adequate resources with
18 which to do a job? What do you mean by resources? Did he
19 need authority, did he need promotion, did he need a title?

20 THE WITNESS: The clearest example that I can
21 give I think is the budgeting example. In this case I think
22 Mr. Burton had the authority in that particular case. In
23 fact, I had just rewritten his job description to make certain
24 that he clearly understood what his job was and what
25 authority he had in the division office. Now the resources

... his carrying on this job
... division was branch one
... the subject to attempt
... of interest that
... saying they
... had
... involved

... you speak to in
... recreation, you
... description
... Boston in
...?

THE WITNESS: Yes.

MR. NEIL: The division chief at that time was
Mr. Roberts?

THE WITNESS: Yes, sir.

MR. NEIL: Was there any other dissemination of
a level of authority for Mr. Boston that you are aware of
by Mr. Roberts as the division chief, say to his branch
heads or section heads?

THE WITNESS: Yes, there was.

MR. NEIL: What form did this take?

[illegible]

1. *Phragmites australis* (Cav.) Trin. ex Steud.

[illegible]

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Q Now, to the last of the direct questions, you spoke of interviews in the personal sense, and I assume you mean two people or more. I'm a little unclear as to how you arrived at the conclusion that you didn't feel that that was especially, your employee did not receive full cooperation when you testified that as his supervisor you made no investigation to find out if his statement was correct? How did you come to the conclusion? Was it simply based on

1. That is all right.

2. Now, I am going to ask you to look at the statement in
3. the exhibit that you have just read. It says that Mr. Barton
4. told you that he had a personal relationship with Mr. Barton.
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100. told you that he had a personal relationship with Mr. Barton.

A Could you rephrase your question again?

Q Well, assuming for the sake of argument that

the system is as truthful as various witnesses have testified
that it is, wouldn't it be possible that every construction or
interpretation of a relationship or why a job wasn't
performed satisfactorily means that what Mr. Barton says
conforms to objective reality? That's all I'm saying.

In other words, can't a truthful man be mistaken,
especially if it involves a personal relationship?

A Yes, I think a truthful man can.

App. 177

1

MR. MC CARTIN: No further questions.

2

MR. NEIL: Mr. Murtha?

3

MR. MURTHA: No further questions.

4

MR. NEIL: Mr. Jackson, you may be excused. You are free to return to your normal place of business. You are subject to recall if we need you, but the call will be in the form of a phone call from me.

5

6

7

8

Thank you.

9

(Witness excused.)

10

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2000

Washington,

MR. NEIL A. CUSHMAN

1. I am calling the witness on behalf of the Appellant and,
2. I am specifically asking you to be sworn and testify
3. to the following:

MR. NEIL A. CUSHMAN:

MR. NEIL A. CUSHMAN:

Q. Now, Mr. Cushman, are you present?

A. Yes, I am present, sir, on a full and honest

and only working in the Washington Field Division.

Q. Do you know a Mr. William C. Burton, this gentleman?

A. Yes, sir.

Q. How did you come to know him?

A. I came to know Mr. Burton in June of 1966.

MR. MURTHA: Mr. Murtha, I wonder if I could
interrupt for a minute.

The Government is quite willing to concede or
stipulate, to save time, that Mr. Burton has a good reputation
for truth and veracity. I think the accumulated testimony
is sufficient on the point, unless you have other reasons to
proceed, I will so stipulate.

MR. MURTHA: May I have a moment?

MR. NEIL: Certainly.

MR. MURTHA: I think it would be quicker to just

1 ask a couple of questions. I won't take more than three
2 minutes.

3 MR. NEIL: The amount of time you need is yours to
4 take, Mr. Murtha, and the Chair will recognize the continued
5 questioning.. Continue with your question of Mr. Cushman,
6 please.

7 MR. MC CARTIN: May I just clarify something? I
8 said the Government, because in other capacities I do serve
9 in other functions, but here I am called a Management
10 Representative.

11 BY MR. MURTHA:

12 Q Did you at one time work with or under Mr. Burton?

13 A Yes, sir.

14 Q When was that?

15 A It was from June of 1966 until December of the same
16 year.

17 Q In what area?

18 A I was a June graduate, employed as an Administrative
19 Assistant in the Manned Flight Operations Division. I was in
20 the graduate training program and the reason I left in December
21 was I was called back to duty with the U.S. Air Force.

22 In my capacity as Administrative Assistant, it was
23 a trainee position, I became involved in the basic areas of
24 managing, administering one of the technical divisions here.
25 I became involved in very basic administrative areas of space,

Q. Now, I am going to ask you, regarding the travel
 A. Yes, sir.

Q. When you were a member of the office, was Mr.
 A. Yes, sir.

Q. Yes, sir.

Q. Now, I am going to ask you, regarding the travel

A. Yes, sir.

Q. Now, I am going to ask you, regarding the travel

A. Yes, sir.

Q. Now, I am going to ask you, regarding the travel

A. Yes, sir.

Q. Yes, sir.

Q. Now, I am going to ask you, regarding the travel

A. Yes, sir.

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A. Yes, sir.

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Q. Now, I am going to ask you, regarding the travel

A. Yes, sir.

Q. Now, I am going to ask you, regarding the travel

A. Yes, sir.

Q. Now, I am going to ask you, regarding the travel

A. Yes, sir.

Q. Yes, sir.

BY MR. MURTHA:

Q Were you aware of some difficulties of the nature I stated?

A From time to time Mr. Burton made aware to me that he was having difficulties establishing officially what he was to do in certain areas. I think at one time we talked about having responsibility for doing certain tasks but not having authority to carry these tasks out. This was mentioned to me.

MR. MURTHA: That is all.

MR. NEIL: Mr. McCartin?

CROSS-EXAMINATION

BY MR. MC CARTIN:

Q During that period -- let's fix it, it is June 1966 to December 1966 that you worked under him, roughly?

A Yes, sir.

Q Mr. Burton was your supervisor and he told you of certain difficulties he had with regard to establishing officially what he was supposed to do. Is this right?

A Yes, sir, with one comment that I would like to make.

My supervisor per se for a long time was, it was in question as to who my supervisor was. As far as -- let me begin at the beginning.

When I first got there I worked directly under

Q Now, did you ever see Mr. Barton at the time that he was in the
 A Yes, I did. I saw him at the time that he was in the
 Q Did you ever see him at the time that he was in the
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Q Did you ever see him at the time that he was in the
 A Yes, I did. I saw him at the time that he was in the

him in 1966?

A No, sir, I haven't applied any where. My employment was not terminated here at Goddard. I was on military leave. I worked for Goddard since June 1966 when I graduated from college.

MR. MC CARTIN: Thank you.

No further questions.

MR. NEIL: Yes, thank you.

MR. NEIL: No further questions.

MR. NEIL: As a management intern, under the management intern program, do you expect to have around in various organizations within Goddard, don't you?

THE WITNESS: No, sir, I am a Rotational Intern. It is a program peculiar to the Personnel Division alone. It is an internal program in the words of Mr. Sumner, the Division Chief. I rotate through the four branches of the Personnel Division, three months in each branch. It is a one year program. At the end of the one year program, which will be coming up in December 1968, at this time it will be decided which area of personnel I will work in. So I will be in Personnel Division.

MR. MC CARTIN: I have just one other question, if I may.

BY MR. MC CARTIN:

Q Perhaps this is unfair and if it is you can indicate

WITNESS: RAYMOND SUMSER

BY MR. MC CARTIN:

Q Since there has been no objection to the authenticity, let's go to the merits, Mr. Sumser.

Would you please indicate what conversation, if any, took place between you and Mr. Burton on February 6?

A I called Mr. Burton over because of my knowledge of certain incidents that had occurred, and my purpose was to discuss with him the reasonableness of the action he was taking. I felt that this particular course of action left management little choice in the case and I frankly wanted to talk him out of it. And tried to do so.

Q Would you explain how you did it to the best of your recollection?

A Well, we had quite a long conversation about what had happened and about five points which he had set up as criteria for performing his present job, or any other job. And I suggested to him that if he had a grievance, it could best be handled through a procedure in which he would not have to suffer charges of removal.

I discussed his relationship with Mr. Thompson with him and I on two occasions suggested to him that the course of action he had taken could cause damage to his career, which I felt were unreasonable in the circumstances, that he could go back, do the job he was assigned to, and raise his complaint through the grievance procedure, which was a route that he

1 could not tell him if he was attempting to resolve
2 the problem.

3 Q Did you think he might be resolved -- as I remember
4 one of the criteria was that Mr. Burton be advised by Mr.
5 [redacted] in the matter of [redacted] was that he be protected
6 by [redacted] of [redacted].

7 [redacted] was one of the criteria that could
8 [redacted] [redacted] [redacted]

9 [redacted] [redacted] [redacted] -- if I have
10 [redacted] [redacted] Director, I would say so. I didn't
11 [redacted] [redacted] [redacted] [redacted].

12 Q And you think, about the previous secretary and the
13 [redacted] in the [redacted]

14 A I am not talking about the criteria that were
15 established. The [redacted] problem Mr. Burton felt existed I
16 felt could be handled with less damage to himself.

17 [redacted] I felt the five criteria seemed to present
18 an [redacted] way to go about this. And I am not really
19 responding to your question I guess.

20 Q Did you, or did Mr. Burton during this lengthy
21 conversation indicate any problems other than these four or
22 five points stated in the criteria?

23 A Mr. Burton showed me two memoranda I think which he
24 had written while he was employed in the Manned Flight
25 organization which he had, he indicated copies were to have

first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MURTHA:

Q Please state your name.

A Walter G. Burton.

Q What is your residence?

A I live at 5902 85th Avenue, Hyattsville, Maryland.

Q What is your age?

A Thirty-nine.

Q Just briefly state your educational qualifications.

A Well, I'm a graduate from the University of Virginia with a BEE in 1955, and I have been --

Q In what?

A Bachelor of Electronics Engineering. And I have been with the Federal Service since and have been included in several training programs, including the Dale Carnegie Leadership Program.

Q And you have had some courses at Goddard?

A Right.

Q Prior to obtaining your degree, what did you do?

A I was with the United States Air Force for three years.

Q In what capacity?

A I was discharged honorably from the Air Force in 1949 as a Staff Sergeant in ground communications systems.

Q How your first employment with the U. S. Government was with that branch of the Government?

A It was with the Navy Department in 1945, I was with the Norfolk Naval Air Station, or 1944, and for the summer and then from school, I was just a youngster, and in 1945 I worked with the Norfolk Naval Shipyard for the summer vacation.

Q Then, working your development at Langley, and beyond, did you receive efficiency ratings?

A Well, as far as I'm aware, my performance has been satisfactory over the years of service with the Space Agency.

Q What was your first employment, what kind of work did you do and where?

A My first employment --

Q With the Space Agency?

A It was at Langley Research Center in March of 1950. And I was employed in the Instrument Research Division the Telemetry Instrumentation Section.

Q In what grade?

A GS-5.

Q Continue.

A After six months in the program there I became a GS-7 and I was assigned to work with instrumentation of rocket-propelled payloads to measure their temperatures at

1 accelerations and pitch and roll and velocity. And in the
2 succeeding six months, as I recall, I was promoted to GS-9.

3 Q Did you work on the Mercury network?

4 A Yes. Following the work with the rocket propelled
5 research vehicles, I was assigned to the Ground Track and
6 Instrumentation Units that were involved in developing and
7 building the Mercury ground tracking and instrumentation
8 network.

9 In December of 1959, as I recall, I was assigned
10 to the Mercury group.

11 Q Did you have something to do with supervision and
12 design and construction and testing?

13 A Yes. Primarily the effort on the Mercury project
14 at Langley was involved in directing the contractor in
15 providing a test facility located at Wallops Research Station
16 where we assembled and constructed the first tracking station
17 in order to establish the unit and systems test and operational
18 procedures for the equipment that would be deployed around
19 the world.

20 Q Did you have some employees working under you at
21 that time, and how many?

22 A Yes, directly under me I had 8 or 9 senior
23 engineers representing the various systems, the radar system,
24 the voice communications, acquisition systems, Mr. Gardner
25 worked under me in this capacity as engineer on the telemetry

system, as well as about 75 to 80 contractor employees there;
at one time from about 5 different contracting organizations.

This was a team effort industry-wide, to build
this military network.

Q What did you have to do with the contractors?

A Well, as soon as the project was assigned by NASA, I was
responsible to direct the contractor efforts during the
development of the system, to make sure that the system was reliable in the systems, to
make sure that the system was reliable, and to set up acceptable standards
and programs that would be utilized as the equipment was
deployed around the world.

As the senior project engineer, all of these
people were responsible to me and came under my direction.

Q Was it deployed around the world?

A Yes.

Q Did you get another grade increase?

A Yes, during that period I got a promotion to GS-11.

Q Did there come a time when you were reassigned to

Goddard?

A Yes. We completed building the network about June
or July of 1961 and the operational responsibility was
then transferred to the Goddard Space Flight Center, and
I elected to come to Goddard and continue my work on the
network.

Q Did the network work?

A Yes, as a matter of fact it worked in a rather exemplary manner. I think we had probably less problems with it than we had with the booster or the spacecraft in sum total.

Q Now, did you get a grade increase when you came up here?

A Right, I was promoted to GS-13 when I transferred to Goddard.

Q When was that about, again?

A It was about June 18, 1961.

Q And what were they doing up here?

A Well, they were at that time assembling a group of people to manage the network and to continue developing it, operate and develop the network.

Q Did you work partly here and partly down at Wallops Island?

A For several month's interval, even though I was assigned at Goddard and on the Goddard payroll, we were working out of Langley Field, cleaning up the loose ends there.

Q Did part of your duties involve establishing -- I'm not sure of the correct technical term -- sort of a master set of equipment that was a duplicate of the other equipment?

A Right. I think what we are referring to is the Wallops demonstration site was meant to be a replica of a

typical Mercury site that would be located around the world and prior to the time we built this first site as a demonstration site, we demonstrated that it could do the job that we were required prior to paying the contractor to build the station in the training, so that the contractor could be experienced with the system.

Then, in the early 1960s, we developed the station and we had a plan to have most of personnel and the station in the demonstration site in about December of 1960, in order to utilize the contractors and personnel and also in the station in the training the station.

Then later by arrival at Goddard I made a proposal that we open the Mallory demonstration site and bring it up to the standard equipment configurations that were used on a world-wide basis, and that we then utilize this facility for engineering and training purposes, as we utilized the network it became necessary to make certain modifications in the systems and we could engineer these modifications and check them out on the standard system, and we could also use it to train the operating personnel around the world. In this capacity, from about 1961 until 1964, I was the station director, the person assigned directly with responsibility to develop such a station and such a

1 training program for Goddard.

2 Q Did you receive a grade increase during this
3 period?

4 A Yes. As I recall, I was promoted again to a
5 GS-14 in early 1964.

6 Q What did you do after that?

7 A Well, as well as being responsible for the develop-
8 ment of this engineering and training center, I was assigned
9 to Mr. Heller's staff and was typically assigned to work on
10 contract development, when we found occasion to contract out
11 for operational network operational support, I was given
12 assignments to work on developing a performance appraisal
13 document for personnel on this contract.

14 And I did work on, in a technical advisory capacity,
15 on many of the major procurements that were purchased for
16 the network, so as a staff type person, any assignment
17 that was given me, I worked on besides the major project of
18 developing the engineering and training center.

19 Q Was the development of the engineering and training
20 center a successful operation?

21 A Well, I of course could only judge its success
22 from the fact that we found it wise to rebuild the entire
23 facility for the engineering functions here at Goddard, as
24 opposed to having it remote. So one would assume that the
25 effort that was developed, the training programs, the

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1 we had manned it with trained personnel, we had a competent
2 NASA supervisor on site and my efforts were no longer
3 required in this capacity.

4 Q So what did you undertake to do then?

5 A From then on it was strictly staff type work at the
6 division level, and sometimes I was very busy, sometimes not
7 so busy.

8 Q When you speak of staff work, what division?

9 A At that time I believe it was called the Manned
10 Flight Support Division. Currently it is the Manned Flight
11 Operations Division. That had the whole network management
12 problem.

13 Q During this next period you were engaged in staff
14 work --

15 A That is correct.

16 Q --with a variety of assignments, some short and --

17 A Variety of assignments, some short and some rather
18 long in duration.

19 Q What happened in June of 1965?

20 A Well, in June of 1965 I was given an assignment
21 to work on the Apollo extension system, or Apollo applications
22 program, as I think it has been referred to previously. In
23 this connection they had set up a task group to do a study
24 on implementing required additions to the network and
25 scheduling the network to handle some additional Apollo

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launches. In this capacity I was to represent the Division as I understood it from an operational standpoint. In other words, the area of concern would be the operational aspects of the network, as opposed to the engineering aspects or other criteria. And of course, the effort have required that I went on to acquire the services of those people who were presently working in the operational area, because I personally did not have enough knowledge about the scheduling of the network and how you would fit in these additional missions and the primary concern was how could we cut the cost of the additional Apollo launches by operational techniques as opposed to just extending the network with new and varied sites.

In the course of this activity, which was supposedly a 60 day detail sort of assignment, I found I couldn't get the kind of support necessary to develop operational plans from the Division. Now they were admittedly busy working on current missions type work, but I couldn't seem to create the interest to get the right kind of people working on an operational presentation for the Apollo extension system.

Q Who was the Head of the Division in June 1965?

A At that time I was assigned, I was assigned by Mr. Haller. Within the next 60 to 90 days a reorganization took place, however, and Mr. Roberts became the new Division

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Chief.

Now, in my attempt to do this job, I had been on it June and July, and had still not been able to raise the kind of operational support to get out what was really needed and in fact, after the 60 days we had gathered reams of various and sundry information, but we had not even affixed a table of contents or an outline of what this report would be like. I discussed these things with Mr. Jackson, and felt that the thing that really was needed was an assignment, not so much that I understood I was over there, but the people required to do the work would understand that this is the thing that I should be working on, and the result was a memorandum and a rough draft of a job description whereby these people would realize that this was an assignment that needed to be supported.

But the memorandum and the job description never did get approved, and about the end of July it became obvious to me that there was no contribution I could make without the support of the people that were knowledgeable in these areas of operations.

So, I talked this over with the group leader and as I had over the two months period and there was no commitment of resources, and so I decided that there was no contribution that could be made personally and I took some leave, some annual leave.

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Always seeking to communicate with Management,
I was home, they knew I was home, and I came in every Monday
to work and conferred with Mr. Tarrance or Mr. Covington.
But at one time Mr. Covington said he would see me, but he
did not on that afternoon.

So when I came back off of leave, Mr. Roberts had
taken over the division or division chief. And this is
the first time that Mr. Tarrance was sitting wherein it was the
first time I did not let him down. I probably was unable to
provide the kind of material that was needed, although I
could refine them and did so, and there were many pieces of
paper that kept Management abreast of the status of my
efforts, the meetings that were held and the net result of
them.

MR. MURTHA: Mr. Murtha, if I may interject, I
want to be very very fair to Mr. Burton. Your answers are
getting a little lengthy, so if you can be more precise
to the question. He is pulling out the information I'm
sure he wants. The only thing I raise is the record will
become so long, it will become unwieldy and perhaps it would
do you a dis-service in that respect.

Would you continue, Mr. Murtha?

BY MR. MURTHA:

Q What happened when you came back with regard to
your job?

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1 A When I returned on the job I was called in by Mr.
2 Roberts and he was visibly not too happy with my having left
3 the previous job, and he indicated he had no job for me, there
4 was no job on the division staff.

5 Of course, my comment to him was that I had been
6 working with the division ever since I had arrived at
7 Goddard, and I felt that until such time that it was advan-
8 tageous to the Government and/or myself, or unless I was
9 reassigned, that I should continue to work there.

10 And that about terminated the first conversation
11 with Mr. Roberts.

12 Q Where were you assigned to work then?

13 A I was not assigned to work then. As I recall,
14 about a week or 10 days, having discussed this thing with
15 Mr. Jackson, who was assistant division chief, I again had
16 a meeting with Mr. Roberts and Mr. Jackson, and they
17 indicated that perhaps this Apollo extension system was
18 going to continue following this initial report, and I may
19 be assigned there, as soon as it became clear.

20 But then in the meantime I would take whatever
21 assignments were available from Mr. Jackson.

22 MR. MC CARTIN: I wonder if possibly we could have
23 an indication as we go along of the dates on which these
24 things occurred?
25

BY MR. HURTELL:

Q Do you want to fix the last date?

A Yes. Regarding this date, this was in late November, 1966.

Q So you continued then to undertake some special assignments from Mr. Jackson?

A In effect. Then in early 1966, I was given an assignment to prepare a management system which would monitor and keep the division abreast of its travel monies. And this involved setting up a technique for monthly appraisals, the sum of money involved was roughly a half million dollars a year in travel expenditures, and this was a concrete, hard assignment.

Q How did you handle that?

A Well, I handled that without difficulty, initially. We gathered the information and set up standard sheets for the branches to record the travel that had been incurred and on a monthly basis they would submit the sheets to the office and we would plot this data as opposed to what we had estimated they would spend, and the report became pretty routin² and pretty valuable.

Q What was your next assignment?

A In early 1966 they were physically moving the Wallops demonstration site to the facilities at Goddard, they wanted me to become involved with this transfer and

22

Q What year?

1. 1964, Mr. Jackson gave me a position description for my current, and that he had proposed to put through to

define some of the things that the division wished I would work on.

But this job description never was approved. Of course, my comments were that I was only concerned with the definition of what they wanted done and a commitment of the resources. And by that, I mean the working line elements, recognizing that these things that I'm asking them to work on are things that have been assigned to me.

Because it is very difficult, as I'm sure Mr. Neil will recognize, for a staff type person, an individual, he has no people that he physically can commit to do anything, he has to look to a subordinate/superior relationship, where the degree of confidence is there, as well as the line elements to get the kinds of support needed to do staff work. And --

Q Were you satisfied with that job description?

A The job description was perfectly fine, I had no comments except "Let's get on with it."

Q Was it issued?

A It was never approved. I talked to Mr. Jackson about it and he said Mr. Roberts was working on the job description, and would get it straightened out.

Q What was the beginning period during which you did not have a job description?

A Well, the beginning period was when Mr. Roberts

Q But again, nothing changed in 1966
A Yes, we went into the year 1967. What happened
the 19
A Right. In 1967, January, I was still unable to
do any real work. By the way, most of the time my work
other than the taking and preparing minutes of the staff
meetings, and the travel thing, which was a one time a month,
very limited thing. I had no assignment to occupy 8 hours a

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4. Again, in 1967, January, I was still unable to do any real work. By the way, most of the time my work other than the taking and preparing minutes of the staff meetings, and the travel thing, which was a one time a month, very limited thing, I had no assignment to occupy 8 hours a

1 day, so I spent it studying, primarily. But in early
 2 February or late February 1967, I realized that progress
 3 was not being made and I couldn't continue this way. It was
 4 beginning to get to me physically. So I called up Mr.
 5 Roberts on a Friday evening and I explained to him that
 6 nearly 18 months had passed and that I had nothing concrete
 7 that could take my energies and I felt that at this point
 8 if he and I could not sit down and reach a some picture of
 9 what he desired me to do, which would give me some confidence
 10 in the future, that I would have to file a formal grievance.

11 Now, Mr. Roberts' response to this was, well,
 12 "I will be out of town next week, but when I get back we
 13 can go over to the personnel office and see what needs to
 14 be done."

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1 detail was to provide him with a quick appraisal of the
2 financial management areas, and what I thought should be
3 done to get the proper people working on this budget.

4 Q Did you prepare such a summary proposal?

5 A Yes, I prepared a memorandum that looked at all
6 aspects of the budget, including the space available, the
7 people assigned and the difficulties that had been encountered
8 in the past, and with some recommendations and conclusions.
9 And I had it typed up and submitted it to Mr. Roberts, as he
10 had requested it.

11 Q That is about when?

12 A March 31, as I recall.

13 Q 1967.

14 A Yes. Then following this the budget came into
15 being. In other words, the call came, the people had to go
16 to work on developing their budget, their 1006 specifications
17 for equipments or need for expenditures of money. And I
18 attended the first briefing by the financial officer at
19 Goddard and then I wrote a memorandum setting up the time
20 and place and the people that should attend the meeting to
21 kick this thing off, to get started early on it. And when
22 the time came, the people didn't show up, key people, the ones
23 that were there wandered in and out.

24 As it turned out, the key man that should have been
25 there was in a meeting with Mr. Thompson. So we reviewed

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from the original

together. It became obvious I couldn't get to see him, so I asked Mr. Glynn, who testified that I had given him a sealed envelope to deliver to Mr. Roberts, I asked him if he would put this in Mr. Roberts mail box and this would guarantee he would have an appraisal of the situation.

Afterward Mr. Glynn, with the envelope that showed the various things that had been set up and also had failed, and the 10 days of the memo again requested that we get together and do this thing, I said I am not making the progress, the job will not be ready at time.

After this, instead of Mr. Roberts talking to me about it, I went to the operations people that I had been trying to work with and reviewed the operations aspect of the budget himself. And I sat there as an observer while he reviewed this, making notes as to what changes he wanted made in what they were doing.

After his meeting was over, with just one of the branches, he indicated that things were not too bad. So what I did then in light of the critical time shortage was to write a memorandum, handwritten, on a yellow pad, with copies of all of Mr. Roberts' comments, what he wanted done, and gave it to the responsible man in the operations branch to be sure that he knew what Mr. Roberts wanted done. That was the last contact I had with Mr. Roberts and subsequent efforts to work with these people, particularly the engineering branch, drew

1

... that I was to be left by no one for six months
... to be responsible for the maintenance of the equipment to come
in and check out the things with anyone. And I had pretty
clearly spelled out what the problems were and why it was
important. I had expected of course that either Mr. Roberts
or Mr. Peterson or Mr. Corington would respond in some manner

Q Would you say then that for a period of time you were in isolation?

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1 A Yes. This was definitely true.

2 Q What period of time?

3 A I would say that from my ability to get the kind
4 of support needed to do these things that they were asking
5 me to do, when they were important things, that from the time
6 Mr. Roberts took over the division I was for two years in
7 a relatively isolated position. There were no major assign-
8 ments I could get my teeth in, no capacity could be established
9 with him. My time was utilized less than 50 percent for a
10 two-year period. I augmented that time by studying.

11 Q What was the end of this period of time?

12 A The end of the period of time came when in November
13 I was requested by Mr. Thompson in response to his own memo
14 to move over to the Goddard Space Flight Center.

15 Q But during the period of say, July, August, September,
16 October, 1967 what were you given to do?

17 A Nothing. As I stated before, between May 26, 1967
18 and November 15 as I recall, 1967, when Mr. Thompson called
19 me and asked for me to move to Goddard, I was contacted by
20 no one, nor did I have any assignments. And this is the time
21 when I began to go to work studying it from the Goddard
22 library standpoint, spending the time studying Goddard
23 documents on management and psychology. I was seeking every
24 technique to try to understand this more at this point than
25 solving it, because it looked insoluble.

Q Now, you said that you were in the
 A Yes, I was in the
 Q And you were in the
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Q Now, you said that you were in the
 A Yes, I was in the

1 A That is correct.

2 Q What did you hear?

3 A The reorganization had officially taken place,
4 most of the people knew where they were going to be assigned
5 and the General Information bulletins, the numbered yellow
6 ones, began to be issued in July that said the Directorate
7 had been reorganized and that those official General memos
8 came out referring themselves to the reorganization, the
9 people that I worked with indicated that they had heard that
10 I would be working in Code 800.

11 Q So that you wrote a memo?

12 A Right.

13 Q Who to?

14 A I wrote a memo to Mr. Covington.

15 Q When?

16 A As I recall it was in October, 1967 about the middle
17 of October, October 10.

18 Q Did you get a response from Mr. Covington?

19 A No, but I did get a response from Mr. Thompson.

20 Q I think that is here.

21 A That is in the record, yes.

22 Q Now in that response that you got, do you recall what
23 it said?

24 A Yes. It said, yes, I had been transferred to Code
25 800 for payroll purposes and that he, being Mr. Thompson, would

Q Now, after that, did you see him again?

A Yes, I saw him again. I saw him on the 15th of November.

Q Now, did you see him again after that?

A Yes, I saw him again. I saw him on the 22nd of November.

Q Now, did you see him again after that?

A Yes, I saw him again. I saw him on the 29th of November.

Q Now, did you see him again after that?

A Yes, I saw him again. I saw him on the 6th of December.

Q Now, did you see him again after that?

A Yes, I saw him again. I saw him on the 13th of December.

Q Now, did you see him again after that?

A Yes, I saw him again. I saw him on the 20th of December.

Q Now, did you see him again after that?

A Yes, I saw him again. I saw him on the 27th of December.

came in to where I was located.

Q Did you move over?

A Yes.

Q Do you want to describe that?

A As I recall I was asked to move on a Wednesday by Monday and I moved over officially on November 17. But there was no office space available for me. I was told to put my desk and things and records and all of the other paraphernalia in an office with someone else which was too small for both of us. So it was just put in temporarily. There was no other way to utilize the space. There appeared to be two desks in there at the time and I sat at one of the other desks.

Q What happened next with regard to space?

A With regard to space, there was an office next door to it that had one gentleman in it, and the question of whether the gentleman in the office with me would move over with him or whether I would move over there and he would move back was resolved within 10 days or so, and the space probably relieved itself when I was moved over into one of the offices and the two people were combined in the one next door.

Q When did you see Mr. Thompson?

A I saw Mr. Thompson on the morning of November 22 as I recall, when he came in. This is prior to getting the office

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straightaway. A week. He came in and told me what he wanted me to do. I went to the line division, concerning the preparation of this mix presentation for Dr. Clark. And then we both went back to the office, where he gave me the folder that contained the information that they had previously given in November. At that time, he said, "I want you to go down and see what he wanted in the way of materials. I want to know what he wanted, and then I'll let you know. I'll let you know what the presentation would be in the future."

I went down to his office, other aspects I would like to talk to him about and he just indicated, yes. It was a very short meeting, five minutes or so. And I went to work on the assignment he gave me.

Q And you prepared a notice for Mr. Thompson to sign and read aloud?

A Yes, again in trying to do the assignment he gave me I ran into difficulty. When I contacted the line division chief, Mr. Roberts, concerning the materials that would be needed to prepare the mix presentation, he indicated that he didn't want to see me in interface, a man that didn't work for either he or I, a man working for the management director or the financial group. I called up the other division and Mr. Call indicated he was not aware that their division had any interests in it whatsoever, but he was willing to look at whatever materials I could send over.

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So between November 22 and December 5 it became obvious that the information was not going to be available by the techniques of working that I had been employing. So I sat down and wrote a memorandum defining what was, the work that had to be done, and the memorandum I thought was pretty good and specific. It was simply written to organize the information, reduce the misapprehension that Mr. Thompson was creating.

Q Did you write that memorandum to Mr. Thompson?

A That happened, when I came in to sign it, the next morning, after I wrote it, the secretary told me that Mr. Thompson had put a hold on the memorandum and I am not even sure I signed it. I just took one copy of it. She said he did not wish to forward the memorandum. And to the best of my knowledge, it never was forwarded, because I never got any of the cooperation I requested in the memorandum.

I subsequently talked to Mr. Thompson about it and several other major factors that were constraining getting this job done.

Q What was the next meeting you had with Mr. Thompson?

A It was probably around the 8th of December.

Q Excuse me just a moment. You submitted a response to the letter of charges?

A Yes, I did.

HR. 127: 05: who record.

(Continuation of the record.)

HR. 127: But the record show that a break

in the record at 5:05 with

the record continuing in the witness chair.

Continuation of the record.

HR. 127: 06: 127

Q Now, you are going to say that the 127 is

the 127 of the 127?

A It probably was around December 8.

Q What occurred at that meeting?

A At that time we had a brief discussion of the

progress on the new presentation and again I request of

him that hopefully he could find some time to discuss some

of the past problems I had had, and the job that he wanted

to do.

Particularly I referenced a memorandum I had

forwarded through the management channels to Mr. Clark,

and showed it to him, and he indicated yes, he thought he

had seen it before, he didn't know what happened to it, and

I prevailed upon him to find out if he could.

He said he would.

Q When was the next meeting?

A The next meeting took place -- I don't recall

the date. It is in the record in part 4 of my proposal --

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mm2

Q What month?

A In December 1967, about the middle of December, or maybe the 12th or so, I was called in the office and Mr. York was there and he seemed to be complaining that I wasn't utilizing his personnel on this assignment.

Of course I listened to his complaint and I thought, when I heard all of his criticism, I did not believe that I had created a mess. He was saying, it should be organized, that I had been using his people, in fact, I had spent considerable time with two of his senior people, and I took the chair out, if you will, and thanked him for coming over and for his comments, and went back to work.

That same afternoon we had a review of the status of the presentation and at that time, based on the way things were going, I recommended we not give it on the date, but delay it a while until we could get a better presentation and Mr. Thompson said, no, he wanted it finished by the 15th, turned over to the management information office. So, I went back to work on it.

Q So that was done as Mr. Thompson indicated this morning?

A Yes.

Q The mix presentation was made?

A Yes. We had a final review on December 15,

17 of which, I think, was a letter from the management
18 of the company, I think, to the management, Mr. Thompson, and he
19 was very much interested in the matter. He would call
20 me up and say, "I got to the point of the infor-
21 mation that you have given me, and I am very much
22 interested in it. I am very much interested in it."
23 And I would say, "I am very much interested in it."
24 And I would say, "I am very much interested in it."
25 And I would say, "I am very much interested in it."

26 And I would say, "I am very much interested in it."
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30 And I would say, "I am very much interested in it."
31 And I would say, "I am very much interested in it."
32 And I would say, "I am very much interested in it."
33 And I would say, "I am very much interested in it."

34 Q And you said

35 A I did appear at the briefing, on December 18,
36 from about 1:00 to 3:30.

37 Q And it went off fairly well?

38 A Yes, and as a matter of fact, I was amazed that
39 the material that was presented was the identical material
40 that I had developed.

41 Q Now, going into January, 1968, when was the
42 first time you saw Mr. Thompson?

43 A January 10.

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Q How did that come about?

A Well, he called me in the office and briefly reviewed some additional materials that he wanted put into the mix presentation and that this job had to be completed by Friday, the 12th.

And I indicated that it might be possible to do this by the 12th, and perhaps I could do it, but not under the circumstances that I was not facing the previous presentation of materials for him, and I again wanted to discuss with him some way of me and I getting to see one another's difficulties here.

But he was only interested in getting the job done, and.

Q Did you want to avoid having the same time of experience you had had in the past?

A Absolutely.

MR. MC CARTER: If I may -- excuse me, I am not objecting to any questions.

BY MR. KURTNA:

Q Did you have such a discussion with Mr. Thompson?

A No, he wouldn't allow the discussion. He only wanted me to go to work and get the thing ready in two days. And I felt it was impossible, under the circumstances to do the thing in two days.

Q Did Mr. Thompson or anyone on the management side

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How long did it take you to solve this problem?

It is noted that the above information is subject to all cases
in the Bureau's files, and it is to be noted that the office
has been advised that.

The first thing I noticed when I stepped out
 of the car was the cold. It was a sharp
 contrast to the warm blanket I had been
 wrapped in. The air was crisp and clear,
 and the sun was shining brightly. I
 took a deep breath and felt a sense of
 freedom. The world was so different here,
 and I was so happy to be here. I had
 found a new home, and I was so grateful
 for it. I had found a place where I
 could be myself, and I was so happy
 to be here. I had found a new home, and
 I was so grateful for it. I had found a
 place where I could be myself, and I was
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 found a place where I could be myself, and
 I was so happy to be here. I had found a
 new home, and I was so grateful for it. I
 had found a place where I could be myself,
 and I was so happy to be here. I had found
 a new home, and I was so grateful for it.

Q Did you receive the letter from the Bureau on the 11th of June
1966? A Yes, I received the letter on the 10th of June 1966
regarding the informant?

A. No, I did not. I never received a copy of it, and there are five additional names that I got copies out of the Japan file in April that I had never seen before, concerning this matter.

Q Do you feel that if you had known that this was becoming a personal matter that you might have had an opportunity to protect your position?

A. Well, I think if I had known that he had brought personnel in formally as the memo indicated, I might have had an opportunity at that time to work with personnel, sit down with Mr. Sumner or Mr. Purvis and Mr. Thompson,

and resolve some of the difficulties I was having.

Q Did they, did you have a job description up to that point?

A No, I had the job description which I had gotten after two years, and this seemed not to really exist, after the company had been in the business for a year. And it was not in effect.

So I had no idea of my position --

Q When was the first time you saw the job description?

A On January 12, 1966.

Q Did you have any opportunities in advance to see it or discuss it?

A No, at that time when Mr. Thompson gave me the job description, he asked me to look at it and to comment whether or not I would accept the job, and I quickly looked at it and asked him for some time to look at it so we could talk about some pertinent items, including some of the past difficulties.

And he asked how long I wanted.

I said anywhere from two hours to two days, or so.

And he looked at his calendar and said he wouldn't be able to get with me until January 20, at 9 o'clock, so we set up a meeting for then.

Q In your experience, do they consult the employees

and have them agree to a job description?

A Yes, I think this is normal personnel practice.

Q Do you feel you were given, under the circumstances a normal opportunity to review and discuss and settle your job description?

A Well, I can put it this way: I have been with the Federal Service for 14 years, I have been at Code 14 since 1961 working with these physicians people. I felt that as a senior staff person at the division level for all of 14 years, when the reorganization took place, if they had decided they wanted me to work in Code 880, that I should have been apprised of this early, not left sitting for six months without any contact, so that I could get a feel for what they would require when I went over there.

Now, I was not given an opportunity to have any feeling for what was happening to me.

Q Were you even sure after Mr. Thompson's remarks that the job would support a Grade 14?

A No.

As a matter of fact -- I want to bring this up and make it as clear as possible -- the criteria for accepting this job were introduced primarily not to force a GS-15, a private secretary, all of the things that were alluded to, but they were brought up primarily to get Mr. Thompson to recognize, because he had not made himself available to

1 discuss these things previously, that I had been in grade
2 four years, I am looking for now a position or a job which
3 has some future to it, and some appraisal of whatever weaknesses
4 he may observe or have heard, like the one Mr. Heller men-
5 tioned about not being able to accomplish one of those
6 jobs, that would equip me to move forward toward a promotion.

7 When I talked to him about the job description
8 in this context, his answer was, he wasn't sure it would
9 even support a 14, much less a promotion to a 15.

10 And I told him then that I felt that if that were
11 the case, the position description should be rewritten
12 to support a promotion. Or, we should determine that there
13 was no growth potential in the job.

14 I was trying to get a feel for what my future
15 was going to be like. And that is how this thing came
16 about.

17 Q I think you stated in your response to the notice
18 for removal that you realized, or at least in your memorandum
19 covering this conversation, that you realized he couldn't
20 agree offhand to give you a 15.

21 A Right.

22 What I was really asking for --

23 MR. MC CARTIN: Could we have a reference to this
24 memorandum?

25 THE WITNESS: I am speaking with reference to a

1 ...and dated January 31, you have your hands on it
 2 of the ... in which I also ...
 3 quoted ... in that meeting.

4 ... through that bit about the
 5 ... I think I clearly spelled out
 6 ... would not ...

7 ... a performance appraisal
 8 ... in that memorandum
 9 ... a person should take a
 10 review of his ... and get a ... appraisal to
 11 determine whether he should continue what he is doing, or
 12 take a new appraisal.

13 BY MR. DEHNA:

14 Q Was that the thrust of what you wanted to have
 15 done as a condition of accepting your assignments?

16 A Yes. I wanted to know what the job, the growth
 17 potential of the job was, and what appraisal, where
 18 necessary, would inform me of those areas of weaknesses
 19 that may create the kinds of problems that obviously had
 20 developed before.

21 Q That was your main purpose in rejecting the
 22 assignment?

23 A That is the only reason for rejecting the assign-
 24 ment, the important issues such as the problems I have
 25 encountered and the details of the job and the necessary

support to do it, to be able to establish a compatibility with Mr. Thompson, a working capacity, so that these resources could be made available to accomplish the work he could assign to me.

But since we had never been able to do this before, he asked me to do the job under the circumstances that I had been working under the previous two years, and I declined on that basis.

Q Now the other matters that you mentioned with regard to a secretary, you understood that you couldn't have a private secretary?

A Right.

But let's just say a word about that. When I was asking to move to Goddard, Mr. Thompson and Mr. Mathis, the administration officer, made it known that the facilities I was moving into, the office arrangement, was a temporary sort of thing, and that a move would take place in March, in which more permanent type arrangements would be made.

Of course, the telephone situation was critical from the standpoint that in trying to accumulate responses from people that would provide the information, if I were not sitting at my desk, I could not receive any return calls. There was no secretary in the system.

So it was a matter of being deskbound waiting for a response to a request from various elements. This is

the thing I wanted to get across to Mr. Thompson.

He said, "I'll get it done. I'll get the messages up."

He said, "I'll get it done. I'll get the messages up."

He said, "I'll get it done. I'll get the messages up."

He said, "I'll get it done. I'll get the messages up."

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He said, "I'll get it done. I'll get the messages up."

He said, "I'll get it done. I'll get the messages up."

He said, "I'll get it done. I'll get the messages up."

Q Think this question over carefully.

Did you in a real sense refuse to perform the assignments?

MR. MC CARTIN: I object. I don't quite understand what you mean by, in a real sense.

All right, go ahead. You are asking him in his heart, what he meant. All right. NO objection.

BY MR. BURMAN:

Q Take Mr. McCartin's word. In your heart, did you intend to refuse the assignments?

A In my heart, what I was refusing was the inability to do the job under the environmental circumstances.

and the lack of support that had been prevalent in the prior effort. If those things were to continue, in my own heart, there was no way to provide the kind of support he was asking for.

I think I simply spelled that out in my letter to Mr. C. At which I tried to avoid this thing.

Q Your answer in January 1968 was what?

A My answer in January 1968 was that I was unable, that the total of my discussions with Mr. Thompson, with representatives from the personnel office, was to the effect that I either took this job or got fired. As a result of that, I was put on leave without pay effectively. I was not given the opportunity even so much as to find employment elsewhere.

Q What were the exact words that put you on leave without pay and who uttered them?

A Mr. Thompson said in view of the fact that you refuse to take this assignment, and work on it, I am going to put you on leave without pay.

Q What date was that?

A This was January 24, 1968.

Q Did you stay on leave without pay?

A I was on leave without pay from that day, actually beginning January 25, all the way until I received a proposed removal notice and I was given time to prepare a

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1 response to me. This time.

2 Q Now when you received your notice of
3 discharge, did you receive it on January 23, 1959?

4 A Yes, on January 23 when I got the discharge
5 notice.

6 Q Did you get the notice on the same day?
7 (January 23, 1959)?

8 A Yes, I got it on the same day. The discharge was
9 delivered to me by a man in a uniform, I don't know
10 his name, but he was a military man.

11 Q Did you get it on January 23?

12 A Yes, I got it on January 23. I was on leave without

13 pay. There was a two-week interval when I prepared
14 the response to the discharge removal that I was in a pay
15 status.

16 A When I was on a leave without pay status from
17 January, on rather February 24 to the end of the tenure here.

18 BY MR. KATZ:

19 Q Did somebody tell you to get your stuff and take
20 it out of the office?

21 A Yes.

22 Q When was that?

23 A As a matter of fact, on January 24, when Mr. Thomas
24 required that I either go to work on that task immediately,
25

on he was going to put me on leave without pay and decided to put me on leave without pay, I was told that my services were no longer needed and I had no reason to report any further, since I gave him the memorandum he was asking for.

So I prepared the memorandum for him, he called me in on Friday, January 18, 1968, and reviewed the memorandum. He told me to get it in into typing, and requested that I visit my residence there again.

I had been told that I was not being paid and that I was to remove all of my belongings from the office and not return to duty.

Q Now, there has been introduced here, or there has been reference made to certain memoranda in the time that you have been until a couple of weeks ago.

Had you seen the memorandum of Mr. Thompson to Mr. Sencer of January 17, 1968?

A No, sir, I had not seen it.

Q Or the memorandum of Mr. Thompson to the record dated January 24, 1968?

A No, sir.

Q Or the memorandum of January 23, 1968 from Mr. Thompson to the record?

A No, sir.

Q Or the memorandum of February 19, 1968 of Mr. Thompson to the record?

Re:

On the morning of March 20, 1946 from
the 11:00 am to 12:00 pm

I was not in the office from 12:20 pm on.

I have not seen the person who was, as I
understand, the person who was the subject of the
investigation. I have not seen the person who was the
subject of the investigation. I have not seen the person
who was the subject of the investigation. I have not
seen the person who was the subject of the investigation.

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investigation. I have not seen the person who was the
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investigation. I have not seen the person who was the
subject of the investigation. I have not seen the person
who was the subject of the investigation.

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1 A Yes. Well, I had already had the proposal for
2 review, I had his offer, he coming, and I was still
3 considering it. I had given him my response, I had given
4 him an oral presentation, of which there seems to be no
5 minutes available. As part of the proposed answer to him,
6 I had said that I would continue to work on the project
7 and work with him for
8 a while. I had said that I could understand
9 his position, his attitude towards
10 his job, and that his job was he was
11 entitled to do. I could go on with a degree of
12 confidence that all of these things had indeed been put
13 to rest.

14 Q What was his reaction to this suggestion?

15 A His reaction was very interesting, and he'd "give
16 it due consideration," but he couldn't respond affirmatively
17 or otherwise.

18 Q Is that the only answer you ever had?

19 A That is the only answer I ever had, until I saw
20 this memorandum which he wrote concerning said meeting.

21 Q Did you ever see the memorandum of February 6, 1964
22 to Mr. -- by Mr. Sumner, for the record?

23 A No, sir. Not until today.

24 MR. WEIL: The chair must interrupt. It is
25 now 5:30. Your 10 minutes has extended to 35. Again, I

1 BY MR. MC CARTIN:

2 Q Do you recall what year this was?

3 A This was about '63. I cannot pinpoint it exactly.
4 I could get it for you, if you like.

5 HEARING OFFICER MASTERSON: We have Mr. Burton
6 removed in '68, right?

7 MR. MC CARTIN: That is right.

8 HEARING OFFICER MASTERSON: So we are five years
9 away from coming up with the charge.

10 MR. MC CARTIN: That is right.

11 BY MR. MC CARTIN:

12 Q Did you have to take Mr. Burton off that job?

13 A Well, he chose not to participate fully so he would
14 present himself through various reasons. So therefore, the
15 work was not getting done and so I had to replace him with
16 another individual who did finish the R.F. portion of it.

17 Q This was a technician?

18 A This was a high letter technician, yes.

19 HEARING OFFICER MASTERSON: What grade?

20 THE WITNESS: He was Grade 12 at that time.

21 BY MR. MC CARTIN:

22 Q Now, did you as a supervisor, discuss Mr. Burton's
23 performance with him during the period of his working for you?

24 A Several times. Several times.

25 HEARING OFFICER MASTERSON: Give us some dates,

1 Q Did you ever talk to him about problems in
2 the use of Space Agency term interfacing with government
3 employees while he was working with you?

4 A On several occasions, we had several heart to
5 heart talks. I suggested that maybe, well, actually,
6 Mr. Burton suggested that, I think, he recognized his
7 own problem and he thought that by taking some outside
8 instruction perhaps, or management courses or an effort of
9 that type he could improve himself. I think Mr. Burton
10 recognized that he had his own failures. On his own,
11 he did enroll therefore, at the Dale Carnegie course. When
12 we found out that he had enrolled on his own for this course,
13 the Government paid his expenses.

14 Q This was a Dale Carnegie leadership course?

15 A Yes.

16 Q When did this take place? Around 1964, was it?

17 A Late '63. Early '64.

18 Q Did you notice a difference in his performance
19 after that?

20 A When Mr. Burton returned from there, he was quite
21 enthusiastic.

22 Q Did problems later develop in say, three to four
23 months after that?

24 A Well, I cannot give you specific --

25 MR. MURTHA: I enter an objection here. At least

1 BY MR. MC CARTIN:

2 Q Did you at any time during this period --

3 HEARING OFFICER MASTERSON: What period?

4 MR. MC CARTIN: I am talking about specifically
5 now the period through '65.

6 Q When you were this man's supervisor, did you at
7 any time during this period have to exercise care in selecting
8 assignments for Mr. Burton?

9 A Yes, but beforehand, I knew this. I did assign
10 him to one job that I would like to say a good word for
11 Mr. Burton on his behalf. We were charged with the
12 responsibility of preparing a feasibility and economic study
13 of who should operate two of our down race stations,
14 particularly the station at Antigua and Accension Island.
15 This was to be decided by Dr. Seman at that time, that it
16 would be based on Economics and Mr. Burton prepared our
17 portion of it. That is, for the operating cost, etc., and
18 did a commendable job on this. This was a direct support
19 of NASA headquarters.

20 Q Well, thank you. And I want to compliment you on
21 your efforts to present the full picture; but getting back
22 to the point, when I interviewed you on Thursday, January
23 9, did you --

24 HEARING OFFICER MASTERSON: What year?

25 MR. MC CARTIN: Of this year, did you not tell

1 Could you, in order to clarify the record and
2 make it simple for the Examiner, indicate what this problem
3 was that you thought this would help in your own words?
4 Just tell us what this problem was.

5 A I may be treading on something on which I am
6 not a qualified authority.

7 MR. MURTHA: That would be a very good reason
8 not to answer.

9 MR. MC CARTIN: This was the supervisor. He
10 saw the Government paid for this program. He testified
11 it was to help Mr. Burton with a problem.

12 HEARING OFFICER MASTERSON: You let us decide.

13 THE WITNESS: All right. That is fair enough.

14 HEARING OFFICER MASTERSON: You are an honest
15 man. Tell us what you think.

16 THE WITNESS: Mr. Burton has a feeling he is
17 a very superior individual at times. I thought so, too.
18 When he started to have trouble, between us we thought well,
19 maybe the world was not all wrong after all. So Mr. Burton
20 suggested that maybe he ought to take a look at himself
21 and therefore, he went to the Dale Carnegie activity which
22 has been described here.

23 HEARING OFFICER MASTERSON: Thank you.

24 MR. MC CARTIN: No further questions.

25 MR. MURTHA: I am not going to ask very many questions.

1 what the relationship is between the two so I understand
2 the weight of the words you answer.

3 THE WITNESS: That is right.

4 MR. MC CARTIN: Would you like the question repeated?

5 HEARING OFFICER MASTERSON: I think we better
6 give him the question again.

7 THE WITNESS: There are three parts to your question.
8 Counselling --

9 MR. MC CARTIN: Evaluation, guidance, counselling
10 and the essential failure of the Agency to communicate
11 with the employee even on the minimum basis required for
12 proper management.

13 THE WITNESS: I would like to speak first as a
14 friend. I feel that I did counsel with Mr. Burton during
15 lunches that we had together, which were quite frequent
16 during the period of 1965 and 1966. As a supervisor, I
17 feel that I did what I could do to help Mr. Burton get his
18 job clarified. I would give him the kind of direction I
19 felt he required in order to do his job. So the answer
20 to that, as a supervisor, is yes.

21 BY MR. MC CARTIN:

22 Q You gave him the required performance ratings
23 and all that sort of thing?

24 A The performance ratings were given by the
25 Division Chief.

1 Q Did Mr. Burton have difficulties in performing
2 staff assignments under your supervision?

3 A He seemed to have problems, yes.

4 Q On occasion, would it be fair to say that from
5 your conversations with him, that he could not quite under-
6 stand why this occurred?

7 A Why the difficulties occurred?

8 Q Yes.

9 A Yes. I think he questioned why he was having
10 difficulties carrying out some aspects of his job.

11 Q Right. Did you form the impression that he felt
12 he was superior to the people he worked with?

13 A I would have to qualify my answer.

14 Q Okay. Any way. Please. We are interested in the
15 truth.

16 A Yes, I think Mr. Burton thinks he is a superior
17 individual, as it relates to other people that he worked
18 with. In some cases, yes, and in some cases, no, I would
19 think. You are asking me what his opinion is. I am not
20 sure of that.

21 Q No.

22 HEARING OFFICER MASTERSON: You are not sure?

23 THE WITNESS: I am not sure of what his opinion might
24 be. You are asking me my opinion.

25 MR. MC CARTIN: I was asking the impression

1 A Disoriented?

2 Q Yes.

3 A I don't see "disoriented".

4 Q I apologize. I made a note the other day after
5 interviewing him.

6 A Discontented?

7 Q Discontented. I am sorry. I wrote "dis" and left
8 out the "c". Forgive me.

9 How did you rate him in that respect?

10 A I rated him discontented, as contrasted with
11 contended.

12 Q Impatient as contrasted to patient?

13 A Impatient, as contrasted with patient.

14 Q And how about quarrelsome. Does he have a rating
15 there?

16 A That is one of the words where I gave him a 2,
17 which is closer to quarrelsome.

18 Q Than what?

19 A Than congenial.

20 Q And in terms of optimism and pessimism?

21 A I rated him 2; closer to being pessimistic as
22 contrasted with optimistic.

23 Q And I guess, outgoing or withdrawing? Is there
24 something like that on there?

25 A Yes. I rated him 2, being closer to withdrawn than

WITNESS: WALTER G. BURTON, JR.

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1 me I should take up with Mr. Roberts, since I was assigned
2 in the same position as staff assistant to Mr. Roberts.

3 So, it was about a week before Mr. Roberts called
4 me in.

5 MR. MC CARTIN: Could we have the date, approximately
6 by?

7 THE WITNESS: Somewhere around the 20th of September
8 1965.

9 BY MR. MC CARTIN:

10 Q What transpired at that meeting?

11 A At this meeting Mr. Roberts was not very well dis-
12 posed of my having been on leave and he simply told me
13 that he had no work for me in the Division, and that as far
14 as he was concerned I could find employment elsewhere.

15 Q Nevertheless, Mr. Roberts signed a step increase
16 for you in November of 1965?

17 A That's correct.

18 Q When was the first time that Mr. Roberts gave you
19 something to do?

20 A In early January, as I recall, of 1966, right after
21 the Christmas holidays, Mr. Roberts called me into the office
22 with the assistant chief, Mr. Jackson, and he reviewed some
23 of the work that would be going on in the Division and he
24 mentioned that this advanced Apollo perhaps would continue
25 in a new vein and I may have a future assignment in advanced

1 Apollo; what he wished me to do currently was to develop a
2 management system which would cover their budget appropria-
3 tion, and that I should from this point on take direction
4 from Mr. Jackson.

5 Q Did you set up the management system, keep track
6 of travel?

7 A Yes, sir, I did.

8 Q And that worked out all right?

9 A Yes, sir.

10 Q It wasn't a full-time job?

11 A No. For the first two or three weeks we could
12 say it was a full-time job in setting up the techniques for
13 controlling this budget, but after the system had been imple-
14 mented it was a matter then of monthly or so reviewing the
15 results and preparing a memorandum for Mr. Roberts.

16 Q The record shows that Appellant Exhibit 6 is your
17 job description for 1963. When was the next time you had a
18 job description?

19 A Well, during the course of 1966 in working with
20 Mr. Jackson, I had several assignments, and as he said in his
21 earlier testimony he was aware of the problems that existed
22 in trying to get job -- suitable description available for
23 me, so it was in early January of 1967 when I was unable
24 to communicate with the Division Chief, Mr. Roberts, that I
25 called him at home one evening and told him that I couldn't

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1 continue in this unproductive capacity, that I wished he and
2 I could sit down and we could define what needed that he
3 would like me to devote my energy toward, and after 18 months
4 we couldn't do this and I would be called upon to file a formal
5 grievance concerning this unproductive time that was taking
6 place, and Mr. Roberts answered to me that he would be
7 out of town until Thursday but on Thursday he would be back
8 and he and I would go over to personnel office and sit down
9 and figure out how to solve the problem, and I thanked him
10 and hung up.

11 Q Did you ever have the conference?

12 A Yes, sir; about a week later, I would say. He
13 and Mr. Jackson called me in the office and they had prepared
14 a rough draft of a job description. They wanted me to re-
15 view it.

16 Q That was customary?

17 A Yes, sir. They wanted me to look at it, see if I
18 understood it, and then a couple of days later to come back
19 and sit down and finalize it, and of course this we did. The
20 job description was finally issued in about May of 1967.

21 Q Up to that time, May 1967, after Roberts came in
22 in September 1965, have you described fully your assignments
23 and the extent of time to which you were employed actively?

24 A Only to the extent of responding to the proposed
25 removal action, and in there I believe I stated that less than

1 50 percent of my time had been productively utilized, that I
2 had been left in almost isolation without any assignments
3 that I could devote my efforts to.

4 Q Was it that fact of underemployment that caused you
5 to do what you could -- why did you need a job description?

6 A I don't think it is so important that a man has a
7 job description in order that he understands what needs to
8 be done, but I think that it is important that the supervisor
9 understands what he is requiring him to do and that the people,
10 the resources necessary on this staff type function, are aware
11 of what I should be doing. Without it, the support just does
12 not become available.

13 Q What is a staff position?

14 A Well, it is a supportive type function in which
15 the person in the position is handed an assignment as problems
16 develop in support of the Division Chief. He may be handed
17 some budget type work or he may be handed response to net-
18 work queries or anything could be assigned as a need appeared.

19 Q A staff man would not himself have a staff?

20 A That's correct, sir.

21 Q How would he get all of these things done?

22 A The only possible way is with the full support
23 and cooperation of the supervisor.

24 HEARING EXAMINER MASTERSON: Just for clarity, what
25 you are saying is that in your instance as staff man you

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1 didn't have a staff because many times a staff man has a
2 whole staff to do a staff job, but in your instance you had
3 no staff.

4 THE WITNESS: No staff at all; only the line people
5 were available.

6 BY MR. TOLSON:

7 Q That is the way NASA was operated?

8 A Yes, although there may be some staff functions
9 which are supported as stated.

10 Q But to pin yourself down, you didn't have anybody
11 assigned to you?

12 A That's correct.

13 Q So that you would have to then go to the various
14 divisions and branches with --

15 A My own organization and try to obtain the necessary
16 help in preparing whatever responses were necessary.

17 Q And you were only as strong in getting help as the
18 extent to which --

19 A Let me put it another way so we are out of trouble.

20 Q It is a little leading.

21 A I understand how to answer it.

22 Q What weight is to be given to the backing that a
23 head of the organization would give to a staff office, he...
24 and you particularly?

25 A It's of paramount importance. In any staff function

1 where you are an individual without resources and they must
2 be provided by a line organization, it is necessary that the
3 supervisor support this thing and the people know he supports
4 it and he signed it and he expects response from the assign-
5 ment.

6 Q Let's see if we can find one example of this with-
7 out burdening the record too much.

8 How long by the spring of 1967 had you been trying
9 to do this?

10 A For about 18 months.

11 Q And to do what?

12 A To get a feeling for what type of work the Division
13 would require me to do, about 18 months, and this is commonly
14 called, I suppose, some sort of job description where an
15 employee can understand what is required of him because for
16 the 18-month period I only had sporadic assignments.

17 Q Was it necessary that other people understood what
18 your function was?

19 A I think this is the thing that made it impossible
20 to function, that the other people needed to know what I
21 was being required to do.

22 Q Now, finally, you have testified that Mr. Roberts
23 got together with you and worked out a job description in the
24 spring of 1967.

25 What activity would you consider the main thrust

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1 MR. MUEHRA: The note speaks for itself.

2 BY MR. MUEHRA:

3 Q (Continuing) He said he wanted to see you?

4 A Yes.

5 Q What happened next about talking to you?

6 A Well, he wouldn't talk to me.

7 Q Nothing happened?

8 A Nothing happened with regard to this. I continued

9 to try to hold meetings to get the budget organized, and
10 the proper personnel, the key personnel, wouldn't attend
11 the meetings.

12 Q Among the units that would have to cooperate on your
13 budget assignment, was one of them operations?

14 A Yes.

15 Q And how important, dollar-wise, was operations with
16 respect to the rest of the office?

17 A Probably in the neighborhood of 70 or 80 percent
18 of the entire budget.

19 Q You had at least how many meetings?

20 A I called two official meetings.

21 Q And at either of those two meetings, was anybody
22 there from operations?

23 A No.

24 Let me reanswer it, if you will. There were people
25 there from the operations who would be working on the budget

1 but they had not had specific assignments on this budget and
2 the key person representing the given branch was not available.

3 Q Who would that be?

4 A Mr. Christie, who has just entered the room.

5 MR. MC CARTIN: Was he one of the people who came?

6 THE WITNESS: No. He was a key person that was un-
7 available for the meetings.

8 BY MR. MCKINNA:

9 Q Was engineering another unit that was important?

10 A Yes. The engineering branch was involved in prepar-
11 ing the budget, their budget portion, for the Division sub-
12 mission.

13 Again, the key representatives from that Division
14 were unavailable.

15 MR. MC CARTIN: Do you mean all representatives
16 or just key representatives?

17 THE WITNESS: Just the key. The budget meeting
18 that I called was to set up a program scheduling timing, what
19 people would be involved in preparing it. Some of the
20 people were there but not their leaders, we'll say.

21 Q Under those circumstances, was it possible for you
22 to perform your assignment?

23 A No, it was not.

24 Q What happened to you after May 1967?

25 A In May of 1967, after many and varied attempts to

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1 coordinate and assist in the development of the entire Division
2 budget for Mr. Roberts, and having repeatedly requested
3 audiences with Mr. Roberts to explain verbally the circumstances
4 because, after all, in his job assignment he had asked me
5 to make him cognizant of any difficulties I was having.

6 After repeated requests for audience with him
7 that were met with no response, I prepared memorandum Exhibit
8, I believe you are now calling it, of which defined the
9 difficulties and showed the parallel between this problem
10 and the problem with the Apollo, and since he was unavailable
11 completely, in order he be apprised of the seriousness
12 of this situation, since the budget had a tight schedule, I
13 requested Mr. Frank Glynn to hand carry the memorandum to
14 Mr. Roberts' home, since they lived nearby.

15 Q Why did you do that?

16 A He was unavailable in the office. I had repeated
17 requests to see him from the secretary and he was not available
18 for an audience.

19 In fact, he was in the office a very small portion
20 at the time.

21 Q Where was your office with relation to his office?

22 A Just next door to Mr. Roberts' office.

23 Q What were your relations with Mr. Jackson?

24 A As --

25 HEARING EXAMINER MASTERSON: First, who is Mr.

1 Q Did you take up with Mr. Roberts orally or in
2 writing, by message, your difficulties that you were having
3 in getting the key people together for the necessary comple-
4 tion of your budget assignment?

5 A No, sir. Mr. Roberts would not provide an audience
6 for that purpose. He did, however, call a meeting of the
7 people in the operations branch and reviewed the budget to
8 his own satisfaction.

9 Q But he wouldn't give you --

10 A He wouldn't give me an audience to discuss the
11 problems that I had written to him.

12 Q Did he take any action to cure the problems?

13 A None that I am aware of with regard to my difficul-
14 ties to proceed with this budget.

15 Q Just describe physically what happened to you,
16 office-wise, job-wise, work-wise, after May 1967.

17 A Right.

18 After I got no response from Mr. Roberts, having
19 written the memorandum with all of its supporting attach-
20 ments and having it hand carried to his residence, I continued
21 to work with the budget for a week or so and then I realized
22 it could not be done without his support; so I wrote a
23 memorandum again to him, and it is in the record, and called
24 forth in my answer to the proposed removal action, if not in
25 other places, that described for him the similarities between

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1 the hopelessness of being able to do this function that he was
2 requiring and the similar difficulties during the advanced
3 Apollo, and I forwarded with a route sheet copies for Mr.
4 Thompson, Mr. Covington, Dr. Viccaro, and Dr. Clark.

5 Q I think Mr. Jackson testified he had sent that memo-
6 ran above Mr. Roberts.

7 A Yes.

8 HEARING EXAMINER MASTERSON: When you say he testi-
9 fied, you mean earlier in that first session?

10 THE WITNESS: Yes. He did forward my memorandum
11 above Mr. Roberts.

12 From that time on, which was the latter part of May
13 until November of 1967, while reporting to work every day as
14 normal, aside from some sick leave or dental work, I had no
15 contact with management whatsoever. There was a period of
16 four or five months in which I described it as a total isolation
17 tion. I am there all day long and I cannot communicate with
18 Mr. Roberts, Mr. Covington, Mr. Thompson or anyone.

19 Q In one word, how would you describe that situation
20 you were in?

21 A In one word I did describe it as "isolation."

22 Q Prior to May, going back, say, to the beginning
23 of 1966, how would you describe in percentages the amount of
24 time?

25 A Right. I think I said openly that as much as 50

1 percent or more of my time, 50 to 70 perhaps, was not utilized
2 at all.

3 Q I believe the record will show there was a reorganiza-
4 tion on July 1, 1967.

5 Did anyone ever discuss the reorganization with
6 you prior to July 1, 1967?

7 A No, sir. As a matter of fact, no one discussed it
8 in July 1967. As I said, I had been in total isolation
9 and the only knowledge I had of the reorganization was when
10 the official announcements came out, and they came out in July,
11 September and October, and it was in October when the final
12 announcement came out -- and I have specified those announce-
13 ments -- that I realized the entire reorganization had been
14 completed, and I had not been consulted as to what my future
15 may be or what I should be doing, and only by the grapevine
16 had someone said they thought I would be assigned to work
17 for Mr. Covington and that's what prompted my note of October
18 to him.

19 Q And who is Mr. Covington?

20 A Mr. Covington, in the reorganization, would be the
21 Assistant Director of the Manned Flight Directorate.

22 Q Is that in a different location, the Secretariat?

23 A It is physically different from where I was housed.

24 Q How far away?

25 A About eight miles. I was housed off the Center, in

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1 Q You heard Mr. Jackson's testimony. Do you think
2 he had perhaps forgotten or was confused?

3 A He perhaps just had forgotten because actually
4 the assignment, I believe, was given to Mr. Jackson and he
5 was so burdened he wanted me to do it for him. It probably
6 slipped his memory or we didn't describe it so that he could
7 remember it.

8 Q Did you or did you not have any difficulties working
9 with people in Defense on this problem?

10 A Absolutely no difficulty whatsoever with either the
11 Department of Defense personnel or our people within the
12 Division, and other parts of the assignment.

13 Q Would you please refer to the note that you sent
14 Mr. Covington in October 1967, which is part of your reply
15 to the letter of charges, and found in part 4 --

16 MR. MURTHA: Incidentally, Mr. Examiner, we may be
17 telescoping some of the testimony here, but with the knowledge
18 that this is quite a detailed answer and this was also his
19 testimony at the agency hearing; we want to give you some
20 feeling of what was going on.

21 HEARING EXAMINER MASTERSON: Be assured that if he
22 does not discuss something today and it is in written form
23 in the case file or was covered in the agency hearing, these
24 things will be equally considered.

25 MR. MURTHA: All right.

1 BY MR. MURPHY:

2 Q In that memorandum -- it is so brief, why don't
3 you just read it. This is what date?

4 A This is October 18, 1967, and as I said earlier,
5 having had no communications with the Directorial management
6 for several months and having heard that the reorganization
7 would assign me to Code 800, I was prompted to write a little
8 note to Mr. Covington in which I said:

9 "My understanding is that I have been assigned Code
10 800 during the reorganization which took place in July of
11 this year. If this is correct, may we get together at your
12 convenience and discuss my new assignment. As part of the
13 discuss I am particularly looking forward to a review of my
14 participation in the manned flight effort here at Goddard
15 since 1963."

16 Q Going back for one minute, were the people of the
17 Division, to your knowledge, called together into a mass meet-
18 ing to discuss the reorganization, and can you tell about when
19 that was?

20 A Yes. I came in from lunch one day, and fixing the
21 date would be real difficult.

22 Q The month.

23 A Some time prior to this note to Mr. Covington; perhaps
24 two or three days prior. It would be the middle of October of
25 1967, and the building was relatively empty, and as I proceeded

1 up to my office it been obvious that it was empty except
2 for a few secretaries. I stopped in the office --

3 Q Which one?

4 A Mr. Roberts' office where all the personnel were,
5 and they said they had been called over to the Center for
6 something in which the Directorate reorganization plan would
7 be discussed by Mr. Covington and Mr. Thompson, and I asked

8 Q This is at the Center eight miles away?

9 A Yes. They were going to brief the entire Directorate

10 Q What else did you ask her?

11 A Had I been requested to go over, and she said, "Yes."

12 Q In sequence you heard from somebody that you were
13 to go to Code 800?

14 A That's correct.

15 Q You wrote the note to Mr. Covington?

16 A Yes.

17 Q Was there a reply?

18 A Yes, sir; there was a reply dated October 29, 1967
19 from Mr. Henry Thompson.

20 Q Was that in the record?

21 A Yes, that is in the record also.

22 Q Part 4 of your reply?

23 A Part 4 of my reply.

24 Q Did you hear from Mr. Covington?

25 A No, sir.

1 Q From whom did you hear?

2 A Mr. Thompson.

3 Q Without reading it, what did he say?

4 A In essence, it was correct, for payroll purposes,
5 I had been transferred to Code 800, he said.

6 Q As of what date?

7 A As of July.

8 Q July 1, 1967?

9 A Yes, and that he expected my new assignment would
10 be available some time in November, that he would talk to
11 me about the new assignment and about moving prior to my
12 transfer, but in no case before certain mission, which was
13 501.

14 Q What is the date of Mr. Thompson's memo to you?

15 A October 29, 1967.

16 Q When did you see Mr. Thompson or hear from him?

17 A About the 22nd of November, 1967. I heard from
18 him on a 17th. He called me and said, "Glen, I would like
19 to have you moved over to the building by Monday. You can
20 talk to Mr. ~~Masters~~ about the office arrangements and make the
21 necessary arrangements with the movers," and I thanked him.

22 Q What happened on Monday?

23 A Actually I effected the move on Friday afternoon
24 and came in on Monday, Tuesday, Wednesday, and it was about
25 Wednesday, the 22nd of November, when Mr. Thompson came in and

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1 gave me an assignment, which I felt was of a temporary nature.

2 Q Just going back a little bit, you moved your
3 desk? You have a safe?

4 A Yes. This required the movement of all of my office
5 equipment, table, chairs, desk, files, safe, and all of my
6 bookcases, records.

7 Q Where were they placed? What room were you
8 assigned to?

9 A Well, I had taken the information from Mr. Masterson
10 in Room 226B, as I recall, and the movers took everything and
11 I proceeded over to the Center and we arrived around the same
12 time, and this room was already equipped for two people and
13 had one person physically working in there, so the movers
14 were a little reluctant to try to get all of my stuff in this
15 room.

16 So, I said, "Wait a second and I'll find out if
17 he gave me the right information," and it was confirmed
18 that this was the room that I should occupy. All we could do
19 at that time, late Friday afternoon, was to unload and stack
20 as best we could all of my equipment into this room.

21 Q When did you see Mr. Thompson?

22 A The following Wednesday.

23 MR. MC CARTIN: November 22nd?

24 THE WITNESS: Yes, as I recall.

25 Q 1967?

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1 A Yes.

2 Q How did that come about?

3 A He came in early in the morning and I think again
4 in my proposed --

5 Q Where?

6 A Into my office, in the morning of the 22nd, and
7 began discussing this urgent requirement for a presentation
8 which he would have to give in December, early December.

9 Q How long did that conference last?

10 A A couple of minutes in my office. And we went down
11 to his office and he handed me the material from the one
12 preceding presentation and a few more words of what he needed
13 me to do. And at this time I asked him if we could get
14 together in the future and discuss difficulties I had and
15 make arrangements in the way of support within his directorate.

16 And so he left in a hurry and I went to work on
17 this presentation.

18 Q That meeting lasted how long?

19 A Perhaps five to seven minutes.

20 Q Did you meet a few more times in December with Mr.
21 Thompson?

22 A Yes, sir; I did.

23 Q Did you ever have an opportunity to sit down and
24 discuss in detail your past difficulties?

25 MR. MC CARTIN: Do we have a date in December?

1 THE WITNESS: The dates I can get to read
2 quickly here, if we need to. I answered day by day with the
3 problem.

4 MR. MC CARTIN: On page 5.
5 December 6th, would it be?

6 THE WITNESS: Yes; December 6, 1967, Mr. Thompson
7 had made arrangements to talk to me about his presentation
8 and we did meet for about 45 minutes and discussed the status
9 of the presentation and a list of difficulties which I was
10 having in getting the information necessary to prepare it.
11 And also discussed a memorandum that I had written to try to
12 organize this meeting to get the people to work on this
13 presentation.

14 Q Did you want Mr. Thompson to notify his people as
15 to what your function was so that they would give you the
16 necessary support?

17 A Yes. That is essentially correct. He had not been
18 available for quite a long period of time and in his absence
19 I had written a memorandum to all of the necessary people
20 and signed it or had attempted to sign it with my own
21 name.

22 When I went in the secretary told me that Mr.
23 Thompson had seen the memorandum and had put a hold on it;
24 so this is a memorandum which I had wanted to talk to him
25 about and he would not forward the memorandum. He said

1 that he would, when he found time, write a memorandum of
2 some description.

3 Q In your efforts to get materials and so on for the
4 MICS presentation, did you have a repetition of your earlier
5 obstructions?

6 A Yes.

7 Again, the lack of support; the refusal by people
8 to become involved in providing the kinds of information
9 which had to be provided were the same as I had been presented
10 with during the budget.

11 Q Now, nevertheless the presentation was made?

12 A Yes.

13 Q And it has been indicated that it came off all
14 right?

15 A As I understand it; yes, sir.

16 Q What happened in January 1968?

17 A Well, January 10, 1968, Mr. Thompson called me into
18 the office and he wished to discuss the next presentation
19 of the next program for January.

20 Q Which was due when?

21 A To my amazement he wanted it available and complete
22 within the next 48 hours, two days, and he was telling me
23 the changes he wanted to make and the new material that
24 would have to be presented. And he wanted me to get started
25 on it right away. And I prevailed upon him that even under

1 the most ideal circumstances I felt that it was near
2 impossible to acquire the kinds of information in the
3 on required in two days to give him the proper support he
4 needed in the presentation.

5 He wasn't concerned at all with this. He was
6 very disturbed that I didn't produce the material immediately
7 and I felt it desirable to produce it.

8 Q At that time, by January 10th, did Mr. Thompson
9 and Mr. Covington, in the directorate, make any effort
10 to grant your request to discuss with you the circumstances
11 that had existed in the past and whether they would exist
12 in the future with regard to work support?

13 A No, sir; they did not.

14 Q Did the job description that you were operating
15 under on January 10, 1968, include directorate matters?

16 A No, sir, not of this nature. It only stipulated
17 that certain things I would do. I would be expected to
18 present them at a directorate level but not the particular
19 work I was being required to do.

20 Q What happened next, after January 10th?

21 A Well, at January 10th, Mr. Thompson said that he
22 would talk to personnel about this, and told me that I
23 could leave the office.

24 Q What happened next?

25 A Well, the next thing I recall happening was I

1 have you performed some services for the Lions International?

2 A Yes, sir; I have, with a great deal of success
3 and with a complimentary letter concerning same, which is
4 a part of the appeal file.

5 Q And you didn't have any trouble interfacing
6 over there; is that correct?

7 A No, sir. That is correct, sir.

8 Q There was some mention made of a questionnaire
9 that you sent to Mr. Jackson.

10 This was in about October 1967; is that correct,
11 sir?

12 A Yes, sir.

13 Q What was your purpose? What were you trying to
14 find out, and why?

15 A I might back up a minute to explain this.

16 Part of the preparation of being upgraded all the
17 time on the techniques of management-- I have been a
18 member of a book club for ten years, and a member of the
19 executive program. In October of 1967 I received this
20 book, and this is identified as being authored by Robert
21 W. Henderson and the title of the book, "Helping Yourself
22 With Applied Psychology."

23 In this book there was a system of rating and
24 evaluation technique for determining by one's own self how
25 he interfaces with people, and it is difficult. In reading

1 the book, I found it was most comprehensive, having not
2 being able to communicate with the management all of these
3 years and months, it looked like here may be a way to
4 communicate with them.

5 So I had some of these forms made up and I attached
6 a note to the key people. These are the notes.

7 Q Did that include Mr. Thompson and Mr. Covington?

8 A Yes, Mr. Thompson, Mr. Covington, Mr. Roberts,
9 Mr. Wood, Mr. Donagan, all of the directorate key personnel.

10 Q Even in October 1967 you were continuing your
11 efforts to straighten out whatever it was, the roadblocks
12 that you saw in the system there and in your job
13 assignments and in your relationships in performing as
14 efficiently as you would like to?

15 A Yes. I was trying to find a communications
16 media, and had not been successful previously.

17 Q You tried this as a desperate effort?

18 A Yes.

19 Q You didn't get replies from Covington or
20 Thompson?

21 A No. I got two replies from people that I was
22 most concerned with. One from Mr. Jack Andicall, who was
23 a branch head in engineering.

24 Q Without going into detail, Mr. Burton, whatever
25

1 seems to be prejudicial. Assuming that Jackson was the only
2 one that ever answered, sir, does the average come within
3 the normal range. That's all.

4 Q Can you answer?

5 A Yes, it does. But let me further say that there
6 is no right and there is no wrong in this evaluation. It
7 is a simple double-ended set of adjectives, good on
8 one end and bad on the other, and it is a given person's
9 appraisal.

10 The reason for sending them around -- I had to
11 fill it out completely, myself, first, but I couldn't
12 evaluate myself -- so I sent them to 16 or 18 people
13 and took the average of everybody's, which was presented.

14 The averages showed that I am well within the
15 average insight and self-acceptance. This is what I was
16 trying to determine.

17 Q That's all.

18 A This material, however, is in original form and
19 hasn't been presented. If Mr. Examiner would like, I would
20 leave it for him. I don't want it to be misconstrued the
21 way it seemed to be coming out yesterday. It was an attempt
22 to communicate with the people after every other resource
23 had been extracted.

24 MR. MURTHA: I think that is the important
25 fact, Mr. Examiner.

1 THE WITNESS: I have summed up the results of
2 these 16 on this sheet.

3 HEARING EXAMINER MASTERSON: Would you mark
4 that, "Summary of All Records"?

5 (The witness complies.)

6 (Documents referred to marked

7 Appellant's Exhibit 12, in
8 evidence, as of this date.)

9 MR. MC CARTIN: We have no objection to the
10 exhibit.

11 HEARING EXAMINER MASTERSON: It is in the record.
12 Do you want to close off with the witness,
13 sir?

14 MR. MURTHA: Yes.

15 HEARING EXAMINER MASTERSON: You have no further
16 questions of the witness?

17 MR. MURTHA: That's right.

18 HEARING EXAMINER MASTERSON: Thank you.

19 Now, Mr. McCartin, would you like to have a
20 break for five minutes before you start your questioning?

21 MR. MC CARTIN: I am prepared to go ahead,
22 Mr. Examiner.

23 HEARING EXAMINER MASTERSON: Then let us
24 proceed.
25

1 Q I would like to read you a short portion and ask
2 you if this is correct.

3 Mr. Thompson states on page 2:

4 "Mr. Burton was asked the question as to Mr.
5 Burton's willingness to accept and perform the assignment,
6 and was asked several times."

7 Is that true? Just that part. Were you asked
8 several times if you were willing to perform the assignment,
9 sir?

10 A Yes, sir; I was.

11 Q And in each case, did you reply that you would
12 not perform the assignment unless certain requirements
13 or demands were met?

14 A That's correct.

15 Q And did you also state that you would not accept
16 any other assignment at Goddard unless these requirements
17 or criteria were met?

18 A I am still looking-- That's the same question
19 you asked before.

20 Q I was trying to refresh your memory by referring
21 to the memorandum.

22 A I am familiar with the memorandum. That is Mr.
23 Thompson's memorandum concerning the meeting and I --

24 Q I think that is true. If you could answer the
25 question.

1 (Question read by reporter.)

2 A The requirements, yes, are the proper working
3 ability with his organization. I was asking him for
4 assistance, I said in here, to make it possible to do
5 the job he was asking me to do.

6 Q Let's get down to that question, now.

7 Were you specifically asked, "Do you accept the
8 job assignment" at that meeting? Were you specifically
9 asked this?

10 A Yes.

11 Q This is the meeting of January 24th?

12 A That is correct.

13 Q Did you state, "A private office must be
14 provided on the periphery of the building where some degree
15 of quietness and outside visibility are available"?

16 A That's correct.

17 Q Did you state that a secretary must be provided,
18 in close proximity, who will take direction from the
19 writer first and everyone else second?

20 A That's correct.

21 Q Did you state proper telephone service must be
22 provided so that one is not desk-bound in order to receive
23 incoming calls?

24 A That's correct.

25 Q Did you state that your in-grade salary increase

1 would become effective as soon as the two-year period
2 expires, that is, by the end of February, 1968?

3 A That's correct, sir.

4 Q Did you state that, "I be recommended and promoted
5 to the proper GS 15 level, effective no later than 30 June
6 1968"?

7 A That's correct, sir.

8 Q Did you state that "conditions be provided whereby
9 a reasonable and proper relationship could be developed
10 between the writer, his supervisor, and other working
11 elements of the directorate"?

12 A That's the key thrust that I was trying to get
13 open for discussion and, as I have said earlier, every other
14 technique had been utilized and so, in order to get him
15 to talk about the job, the future, raise potential, I
16 offered these things just to get the man available for
17 communications on the subject.

18 The letter to Dr. Clark, these things are
19 relatively insignificant, but what is important is an
20 appraisal which would show my difficulties, as they existed,
21 be made available to me.

22 Q Were you asked at that meeting whether you had
23 been told you would not receive an in-grade salary
24 increase?

25 A Yes, sir; I was.

1 A The meeting of the 6th of February to me was a
2 thing that should have been a working solution to the problem
3 and I don't think that a negative approach like filing a
4 formal grievance was a proper solution to a management
5 problem.

6 Let me continue.

7 I pointed out at that time to Mr. Sumser that the
8 problem was a management-created problem and that I felt
9 that management should resolve it with me.

10 HEARING EXAMINER MASTERSON: You understand
11 also, now, so we don't get too far off into the atmosphere,
12 that you were facing an employee problem, too, didn't
13 you?

14 THE WITNESS: Yes, sir.

15 HEARING EXAMINER MASTERSON: I think you ought to
16 keep in mind, when I keep talking about a management problem
17 you have got to keep in mind that I am going to have to
18 consider was there an employee problem as well, and look
19 at that aspect of it, too.

20 THE WITNESS: Right.

21 HEARING EXAMINER MASTERSON: Mr. McCartin.

22 MR. MC CARTIN: If I may consult with my associates
23 sir.

24 HEARING EXAMINER MASTERSON: Consult.

25 (Whereupon, Mr. McCartin consulted with Mr.
Purvis.)

1 on a minor aspect of the problem?

2 A I am treating the fringe things we talked about,
3 the business of a job promotion, outside windows, secretary,
4 telephone, and private bath or something.

5 Q Would you say your refusal to perform the
6 assignment was a minor thing?

7 A I would say that it would have been improper
8 to accept an assignment from a supervisor, leaving him
9 expecting you to provide the materials that are given time
10 and place when there was no visible way of providing
11 them.

12 This is the thing that is the paramount problem
13 that has gotten us here today.

14 I gave you the answer when I read in good
15 conscience I couldn't accept a job for which there was
16 no way of doing it.

17 Q Mr. Burton, Mr. Jackson was your Assistant
18 Division Chief up until some time in July of 19--June or
19 July--of 1967?

20 A Yes.

21 Q Did he meet with you frequently to discuss
22 management problems?

23 A As often as was needed.

24 Q Did he meet with you frequently to discuss
25 management problems during the period he was the assistant?

1 A He never refused to hear me when I came in to
2 discuss the merits of doing the thing he asked.

3 Q Did he meet with you, frequently?

4 A Whenever I required it.

5 Q Can you--

6 A What do you mean by "frequently"? Every day,
7 or every week, or every month? I don't have an answer,
8 sir.

9 Q You tellus how often you met with him.

10 A As often as required. There were long periods
11 of time when I had no assignment from him.

12 Q Was there a long period of time when you had
13 lunch with Mr. Jackson on a daily basis?

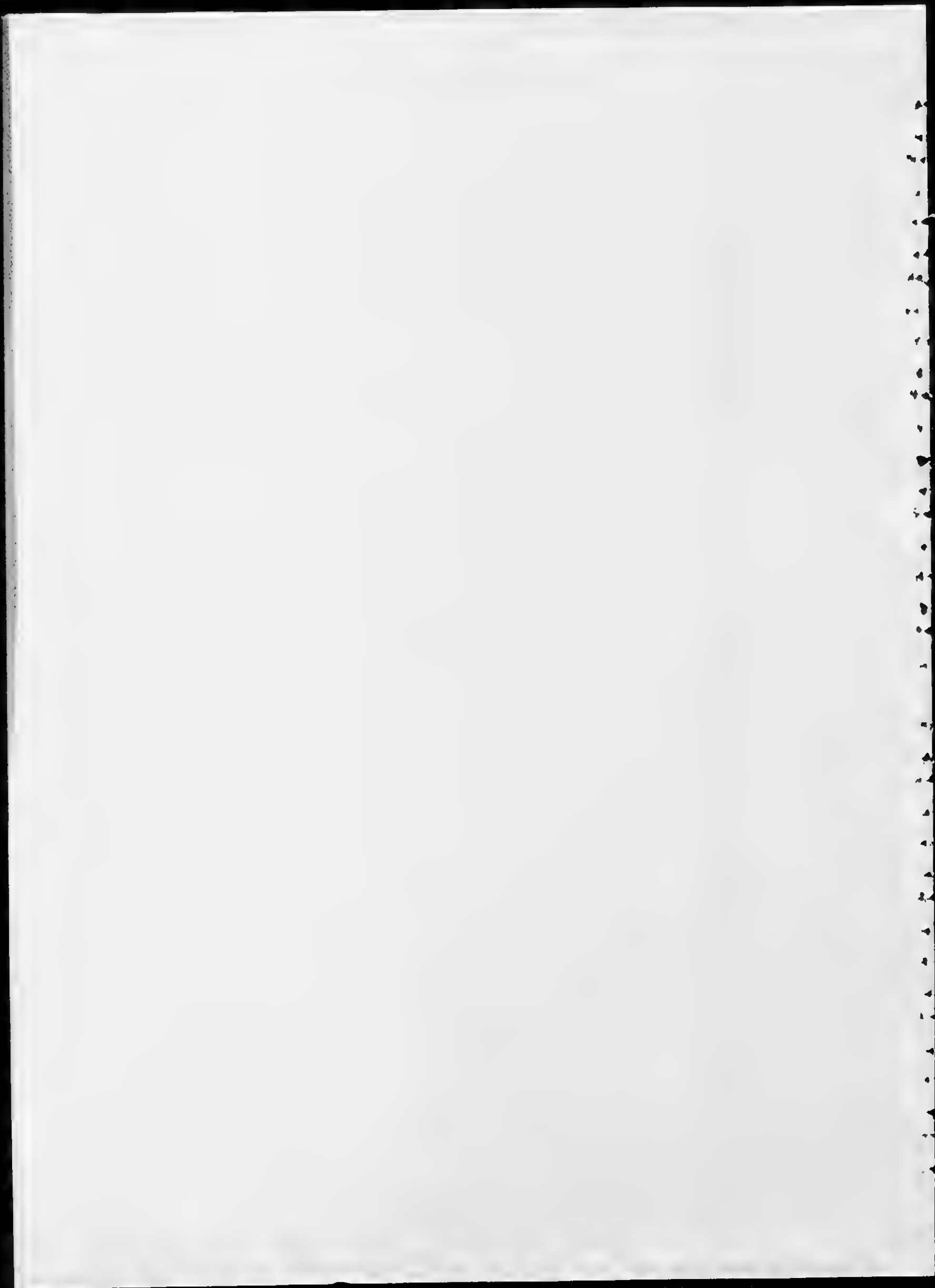
14 A Never on a daily basis but he and I had lunch
15 together on numerous occasions, sometimes two or three times
16 a week and sometimes two or three times a month.

17 Q During these occasions did you some time discuss
18 your difficulties and management problems?

19 A We always worked right through lunch when we
20 had occasion to lunch together.

21 Q Would you say that as your supervisor, Mr. Jackson
22 spent perhaps more time discussing management problems with
23 you than with anyone else on the staff, to the best of
24 your knowledge?

25 A I don't know. I was the only division man on



IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,611

WALTER G. BURTON, JR.,

Appellant,

v.

THOMAS O. PAINE, JR., DIRECTOR,
NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION, ET. AL.,

Appellees.

APPEAL FROM A JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPELLANT'S BRIEF

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 20 1970

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In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,611

WALTER G. BURTON, JR.,
Appellant,

v.

THOMAS O. PAINE, JR., DIRECTOR,
NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION, ET.AL.,

Appellees.

Appeal From A Judgment Of The United States District Court
for The District of Columbia

BRIEF OF APPELLANTS

STATEMENT OF ISSUES

Appellant, a veteran within the competitive service of the United States, was removed from his position as a GS-14 employed by NASA. The issues turn on whether the agency complied with the Lloyd-LaFollette Act, as amended, 5 U.S.C. 7501 (Appendix A), the Veterans Preference Act, as amended, 5 U.S.C. 7512 (Appendix A), as well as with the regulations of NASA and the regulations of the Civil Service Commission,

and whether the agency acted arbitrarily, capriciously, unlawfully, or in bad faith.

The issues more fully stated are:

I. Whether a rational basis for discharge on the ground of failure to perform exists in that the statute limits removal for "such cause as will promote the efficiency of the service" and the employment records reflect an impeccable record for fifteen years and the employee established by well documented and undisputed facts that for nearly two years prior to the charged event the agency continually failed to give the employee necessary support to perform assignments, failed to provide guidance and counselling, isolated and otherwise harassed and impeded the employee in the performance of his duties, and where the employee was unable to continue to perform because of the continuance of these conditions and notified his supervisor that there must be a resolution of these problems in order for him to continue to perform any duty.

II. Whether the discharge was a result of substantial procedural errors going to the heart of administrative action where:

a. The letter of charges alleges only a failure to perform a task assigned on January 11, 1968 (to be performed on January 13), at a time when the employee did not have an official Assignment or Job Description and where an Assignment and Job Description was officially given to the employee on January 24, 1968, and the employee was placed on Leave Without Pay on January 25 without his consent and continued in such status until February 13, 1968.

b. The agency failed over a period of years to comply with its regulations requiring job evaluations, to provide job descriptions,

and to provide consultation and guidance, and where such failure by the agency is the direct cause of the circumstance on which the charges are based.

c. Where the agency places an employee on leave without pay without his consent and without cause during a period for which it is charged that the employee failed to perform.

III. Whether an agency can proceed to discharge an employee who has by construction of law filed a grievance which the agency refuses to accept and process.

IV. Whether removal is lawful where the agency refuses to consider the answer of the employee to the charges and fails to base its decision thereon and whether the statutory right to an "oral reply" was permitted under the circumstances of this case.

V. Whether removal under the circumstances of the case was harsh, unwarranted and an abuse of the judgment required to be exercised, particularly in view of the mitigating circumstances.

JURISDICTIONAL STATEMENT

This is a suit for declaratory judgment and injunction under 28 U.S.C., Sections 2201 and 2202; 5 U.S.C. 701, et seq. This appeal is brought under 28 U.S.C. Section 1291 from the order of the District Court (1) granting appellees' motion for summary judgment, dismissing the action, and (2) denying appellant's motion for summary judgment.

(J.A. 36). This case was not previously before this Court.

REFERENCES TO RULINGS

The District Court ruled on cross-motions for summary judgment. See Order (JA 36) and oral Statement from the Bench (JA 37).

STATEMENT OF THE FACTS

The relief sought by appellant and denied by the District Court was for an order declaring his discharge to be unlawful and ordering restoration. Appellant was discharged by the National Aeronautics and Space Administration (referred to hereafter as "NASA") on March 29, 1968 from his position, GS-14, in the competitive civil service of the United States. The Notice of proposal to remove appellant was issued February 13, 1968. (J.A. 42) Appellant replied on February 28, 1968 (J.A. 38-33) First the agency and then the Civil Service Commission on appeal denied relief to the appellant. (J.A. 88, 91, 98) The pertinent and undisputed material facts are set forth by appellant and appellee, as required by local Rule 9(h) of the District Court. (J.A. 13-32, 33) In granting a judgment for appellees the District Court held that the facts were not in dispute. (J.A. 37) These facts constitute the core of the record on which appellant relies. The following is a summary outline of the salient facts.

At the time of his discharge, March 29, 1968, appellant had served the United States in the armed service for three years and as a Civil Service employee for sixteen years. He had risen in the period since 1956 to 1968 from a Grade GS-5 to a GS-14. During all of this time he received not only regular grade increases but, also, step increases. His record is clear of letters of reprimand or other derogatory action. He received satisfactory performance

ratings throughout his career. His file, in fact, contains letters of commendation. Characteristic of the high calibre of his performance ^{1/}are the statements of highly placed employees of NASA, Youngblood and Graves (J.A. 113), Heller (J.A. 139), Jackson (J.A. 166), Gardner (J.A. 133), Karas (J.A. 150), and others. (J.A. 128, 145, 178).

Prior to November 1967, appellant had been employed for several years in the Tracking and Data Systems Directorate, Manned Flight Operations Division, NASA. After November 17, 1967, he was physically located in the Office of the Assistant Director for Manned Flight Support Directorate, situated several miles from his former division. On the new job not only the work was new but, also, the place, the supervisors and functions. At the new location appellant was orally asked in November to work on what was known as a MICS presentation. This meant that he was required to pull together certain data from other divisions so that a comprehensive report could be presented to the Director. Appellant worked on this in December and the presentation to the Director made on December 15. On January 11, 1968 he was told to proceed with a similar compilation and have it ready by January 13. (J.A. 23) At the time this occurred, the appellant did not have a job description covering what was expected of him at the new location nor was he ever officially assigned to the new division, nor given an orientation

^{1/} Board of Appeals and Review of the U.S. Civil Service Commission found "There is evidence in the record to show that the appellant has performed well in the past." (J.A. 102)

regarding new duties.

As of January 11, 1968, the experience of the previous two years had been marked by the following:

(1) Appellant had been kept in absolute isolation from May 1967 until November 17, 1967. (J.A. 19) Prior to that he had assignments which would only require short periods of work each week. (J.A. 17, 18, 243, 244, 245) Furthermore, during this period appellant had been in a staff position which meant that he did not have a staff of his own but, instead, was required to ask assistance from other divisions and sections to carry out whatever assignments were given to him. Appellant's new job was also a staff position. In order to successfully operate in such a staff position it was necessary that the Division Head give him support. The support required was not only providing physical equipment and office services but, also, the issuance by the supervisors of instructions or requests to other offices to provide assistance to the appellant. Such support was not forthcoming. Mr. Roberts, the head of the Division where appellant was employed prior to November 1967, although located in the office next to that of appellant, was not available for conference or other meetings with appellant with regard to resolving the problem of lack of support and failure to give appellant a firm assignment. In fact, in order to communicate with Mr. Roberts it was necessary to have a letter hand-delivered to Mr. Roberts' home. (J.A. 18, 19)

A reorganization took place beginning July 1, 1967, but appellant was not advised of where he would fit in. (J.A. 19) When he finally learned he was to be moved to the Directorate in October 1967, he asked for a preliminary conference with regard to his past treatment. (J.A. 20, 71) This request was not granted. The physical circumstances of his move to the new Directorate constituted continued harassment in that he was never given an orientation with respect to his new duties, his furniture was unceremoniously dumped in a crowded office, and he had difficulty finding adequate secretarial and telephone facilities. (J.A. 20, 61) In addition, Mr. Thompson refused to send out a proposed memorandum or any other memorandum to those whose assistance was required if appellant were to operate efficiently. (J.A. 20)

During November and December, appellant continued to ask for a meeting to resolve his past difficulties and for assurance that the treatment he had been receiving would not continue. This was denied to him. He did, however, prepare a MICS presentation for December 15, 1967 which was satisfactory. When, on January 11, 1968 he was asked to prepare by January 13 another such presentation, appellant, believing on the basis of all of the facts that he was again to be isolated and expected to operate without support, asked that these problems be resolved as a necessary condition for his performing the assigned task. Management refused this request and continued its refusal up to the date of firing on March 29, 1968.

On January 11, 1968, the appellant did not have either a job description or an official assignment. Both of these documents were subsequently put together and officially handed to him on January 24, 1968, as found by the Board of Appeals and Review of the Civil Service Commission. (J.A. 102) Appellant continued to ask for assurances with regard to where he stood and where he was going in the organization and, as a result, the agency placed him, involuntarily, on leave without pay beginning January 25, 1968.

(J.A. 22) He remained on leave without pay until February 13, 1968, when he was handed a notice of proposed dismissal on the grounds of insubordination for his failure to perform the task assigned January 11. Thereafter he was continued on leave without pay except for a few days in February allowed for preparation of his reply. At the time he had ample annual leave and the law and the regulations required keeping an employee on the job pending discharge proceedings.

The position description as finally presented, January 24, 1968, (J.A. 102) contained entirely new duties than those contained in the previous description covering appellant's job when he was in the Tracking and Data Systems unit. (J.A. 108, 111) During the period from January 11 to January 24 no other assignments were given to the appellant except the one which was given January 11 to be completed January 13. The same is true for the period from January 24 to February 13 although his job description encompassed a number of other activities to which he could have been assigned.

During January and February 1968 (up to the 13th), and even afterwards, the agency, several times, advised the appellant to file a grievance procedure. (J.A. 153) After February 13, although appellant was permitted to talk to his supervisor, there was no oral interchange relating to appellant's problems nor any effort to resolve them. Appellant's written request for oral interview to the Director, Dr. Clark (J.A. 83-86), was also denied. (J.A. 104)

Appellant, having exhausted administrative remedies and the District Court having denied his motion for judgment and having granted appellees' motion, asks that the Court of Appeals review and set aside the decision of the District Court as contrary to law for the reasons as hereinafter stated.

SUMMARY OF ARGUMENT

I. The discharge was outside of the statutory authority. The appellees have failed to demonstrate a "rational basis" for its conclusion that appellant's discharge will "promote the efficiency of the service." 5 U.S.C. 7501(1). To do so, the appellees must establish that the discharge was for "cause" within the meaning of the law. Where "cause" is not shown, then the discharge is invalid and must be set aside. Norton v. Macy, 135 App. D.C. 214 (1969), 417 F.2d 1161; Carter v. U.S., 132 App. D.C. 303 (1968), 407 F.2d 1238. The discharge is further vitiated by the failure to give appellant

the statutory right for an opportunity to make a personal or oral reply to the charges. Ricucci v. U.S., 192 C. Cl. 1, 425 F.2d 1252 (May 15, 1970) Finally, the agency's action is unlawful because the appellees failed to reach a decision based upon appellant's answer as required by 5 U.S.C. 7501(4) as well as by Civil Service Regulation 752.202(b).

Whether the discharge of appellant was lawful requires weighing not only the narrow circumstances of whether he refused to perform a particular task on a particular day but also the circumstances which preceded and which followed the charged event in order to determine the existence of bias and bad faith on the part of management and the extent to which the agency's actions, including failure to comply with its own regulations, were the key contributing factors leading to the alleged failure to perform. Reale v. U.S., 188 C. Cl. 586, 413 F.2d 556 (July 16, 1969) It is undisputed that government agencies are required to follow their own regulations in separation cases. Roberts v. Vance, 119 U.S. App. D.C. 367, 343 F.2d 236 (1964)

II. The record shows that in addition to a concerted effort to secure the separation of appellant for reasons other than for "cause", there are many substantial procedural errors going to the heart of the administration action which alone require setting aside the discharge. Powell v. Brannan, 196 F.2d 871, 873.

(A) The letter of charges does not state grounds for removal being bottomed on the allegation of failure to perform duties at a time when such duties were not assigned to appellant.

(B) Appellee failed to comply with regulations relating to job evaluation (J.A. 32), reassignment and job descriptions (J.A. 24-26), which made it impossible for appellant to perform and appellee is estopped to allege failure to perform where the job has not been established.

(C) Placing appellant on Leave Without Pay unlawfully, in itself, constituted adverse action without notice, deprived appellant of an opportunity to perform and shut off appellant's earnings, thus handicapping appellant in the preparation of his defense.

III. Appellees assert that appellant could have escaped discharge if only he had filed a grievance. However, the record shows that appellant constructively, as a matter of law, filed a grievance but the grievance was not considered. In any event, a matter which an agency characterizes as falling within the scope of a grievance does not meet the statutory test of "such cause as will promote the efficiency of the service." 5 U.S.C. 7501(1).

IV. The punishment of discharge, as a matter of law and regulations, was harsh and unwarranted and, therefore, invalid. Clark v. U.S., 162 C.Cl. 477.

A R G U M E N T

PRELIMINARY STATEMENT

Appellant's case is unique in that there is absent all of the usual circumstances found in discharge cases. It must be conceded by virtue of the record of the rapid rise from GS-5 to GS-14 in a span of ten years, accompanied by the granting of step increases and the absence of any letters or actions of reprimand, that appellant was efficient. Furthermore, appellant was not habitually tardy nor an alcoholic, nor is there a suggestion of any improper conduct on the job or away from it. In fact, the testimony from other employees of all grades showed appellant to be honest, dedicated and very effective. For these reasons, it is necessary to closely scrutinize all of the circumstances. The appellees would have the Court look only to the narrow question of whether appellant refused a particular assignment and ignore any inquiry into the total treatment of appellant by the agency. Appellant insists the law requires a fair hearing which includes consideration of years of isolation, lack of the support necessary to satisfactory performance, as well as the agency's failure to evaluate his job performance, advise appellant of any shortcomings -- all this while appellant asked over and over again for a discussion with his supervisors as to the cause of this treatment and how he might correct any inadequacies on his part.

When appellant was moved to a new division with new duties and new supervisors he insisted on knowing what was wrong and where his future might reasonably lead and whether the old treatment was to be

continued. Because of this insistence, he was fired. The circumstances lead only to the conclusion that, for reasons undisclosed, the agency was merely waiting for an opportunity to "catch" appellant "out" for they latched on to the alleged insubordination after framing a job description and assignment, after the event, to support the charge and then shut its ears to appellant's pleas to be heard on his long-standing grievance.

The record in this case does not substantially support the discharge of appellant either as a matter of fact or law.

I.

The Discharge of Appellant Was Outside Statutory Authority Because It Was Not For "Cause" Because Appellant Was Not Given An Opportunity For Personal Reply And Because The Appellees Did Not "Consider" His Reply To The Charges.

A. The Discharge Was Not For Cause.

"The Government must support the statutory directive that removal must be only for such cause as will promote the efficiency of the service." 5 U.S.C. 7501, 7512. (Appendix A) The Government fails to meet the statutory requirement. The appellant was an adequate and valuable employee. There is nothing to indicate that he lacked ability or that there were other reasons making him undesirable in the ordinary sense. When all of these elements are lacking and dismissal is on technical grounds, then the burden is ever greater on the Government to show "cause". Dismissal did not serve the interests of the Government and other and less harsh means were at

the disposal of the appellees which would serve its purpose and not destroy the employee. Norton v. Macy, 135 App. D.C. 214 (1969), 417 F.2d 1161^{2/}

"Cause" is to be given full meaning beyond mere authority to discharge. A discharge for "cause" must meet two criteria of reasonableness -- one, that it is reasonable to discharge an employee because of certain conduct, the other, that the employee had fair notice that such conduct would be grounds for discharge. Carter v. U.S., supra.

As appellees' records and uncontradicted evidence show, appellant's discharge would not promote the efficiency of the service. Apart from this, the tests of reasonableness and notice are not met. The "conduct" in question is not simply the failure of appellant to perform an assigned task but there must also be considered the reasons which he gave and circumstances before and after January 11, which relate to an must be weighed in evaluating that "conduct". Appellant did not in a real sense refuse, he merely accompanied his offer to perform with a plea that past harassment be discontinued, that he not be kept in isolation, that he have backing to perform the job and that he have some understanding of his future in the agency. Appellant's "conduct" is inextricably tied to the agency's conduct over the years. If the agency had performed under its regulations, then the problems raised by appellant would long before have been resolved. If the

^{2/} The agency's table of disciplinary action which would have required a letter of reprimand rather than dismissal.
(J.A. 31, 32)

supervisors had sat down with him in January instead of putting him on involuntary leave without pay and worked out the issues, the matter would have been resolved. If appellant had some weaknesses, the agency was bound by its regulations to disclose such faults and try to assist appellant.

The agency would have it that neither the courts nor the Civil Service Commission nor the agency can look at anything in the employer-employee relationship in this case except the narrow and technical issue of whether appellant failed on certain days to perform one particular task. The Position Description given appellant January 24, 1968 (J.A. 111) contained several areas of job activity, only one of which was preparing an MICS presentation -- a once a month job. Nowhere is there any suggestion that appellant refused to perform other duties. (Of course, an employee on enforced leave without pay is not in position to perform any task.) It is beyond question on the undisputed record of this case that appellant was not discharged for any reasonable cause arising from the events of January 1968.

Appellant may have been naive but it is obvious that he was not aware that his "conduct" would result in dismissal from his "17,000 job acquired after fifteen years of dedicated effort. His history shows that he was energetic, dedicated, and that when given the tools, he performed well. The failure to give appellant a job description or to orient him to his new functions is closely akin to lack of notice that his conduct might result in discharge. Unless a person knows what is expected of him he cannot be said to be on notice. In the sense that this Court has applied the law and considering all of the facts -- those occurring before as well as

after January 11 -- it cannot be concluded either that "cause" for firing existed or that appellant was put on notice that his conduct would result in dismissal.

Thus it firmly appears that the conditions for firing for cause did not exist, first, because it was not reasonable under the circumstance and, secondly, because appellant was not aware his conduct would result in dismissal. The discharge was, therefore, unlawful for as this Court noted in Carter v. U.S. *supra.*, p. 1242, footnote 4, "It seems plain to us that no discharge could be for 'cause' within the meaning of Section 9(c) if it were so arbitrary and unreasonable as to violate due process."

B. Appellant Was Not Given An Opportunity To Answer Orally".

Every employee in competitive service is entitled by statute and regulation,^{3/} before a discharge can be lawfully effected, to an opportunity to "answer personally" to the charge (the Civil Service Regulation uses the term "answer orally"). The record in this case reflects that the appellant was allowed, after his written reply to the charges, to "talk" to Mr. Thompson. Mr. Thompson made memorandum records of these talks. These memoranda reflect that appellant talked "at" Mr. Thompson rather than "with" him and that all Mr. Thompson said was to repeat "Are you willing to perform the task". One-sided conferences such as these are not personal answers within the meaning of the statute or the regulations. The law contemplates an exchange,

^{3/} 5 U.S.C. 7512(b), Civil Service Reg. Part 752.202(b)

explanations, replies to questions and a reasonable effort at communication. The Court of Claims recently has spelled out what the law requires. Ricucci v. U.S., 192 C.Cl. 1, 425 F.2d 1252, decided May 15, 1970. There, the Court held that the Government failed to accord the opportunity of a proper "oral reply", and set aside the discharge of the employee. The following language of the Court is particularly pertinent here:

"Nevertheless, the fact remains that failure to award a proper opportunity for oral reply to an employee entitled to this right and requesting it, is a fatal defect in an adverse action. Paterson, supra; Tierney v. United States, 168 C.Cl. 77 (1964); Washington v. United States, 137 C.Cl. 344 147 F.Supp. 284 (1957); see O'Brien v. United States, 151 C.Cl. 392, 396, 284 F.2d 692, 694 (1960). It remains to inquire whether the oral reply as provided for here was the kind the statute, the regulation and the cases contemplate. This affords a very pretty problem in the interpretation of official language, but we think our answer is free from doubt. It is true of the regulation as we said in Washington (137 C.Cl. at p. 350, 147 F.Supp. at p. 350, 147 F.Supp. at p. 288) of the statute, that the allowance of this oral reply implies an intent that the employee may succeed with it at times/ It is not to be a futile ritual.

"In the first place, there must be a significant difference in use and function between an oral reply and a written reply, since both are contemplated in the law. That difference would not exist in case of an oral reply dictated into a tape recorder, however satisfactory it might be to the employee to hear his own voice. The "oral reply officer" clearly therefore must play a role other than as presiding over a recording and transcribing medium. What the difference is -- and the purpose of an oral reply -- the oral arguments before this Court would suggest. The person arguing orally can tell by our questions and comments how his presentation is going, what is making an impression and what is not, what needs clarification or substantiation, and what had best simply be dropped. To appoint an investigator -- even one who normally investigates another kind of case -- is to negate the feedback, as Mr. Gildea demonstrated here. Such a man is trained to let his witnesses divulge their secrets, while himself betraying no emotion, and disclosing no information. This is not to say that counsel was right in demanding

access to the evidence. That is usurping the function of the later hearing. We do think he was entitled to a general give and take discussion of the case, which the appointment of an investigator as 'oral reply officer' seems as if expressly designed to negate." (Emphasis supplied)

When there is coupled with Thompson's indifferent listening to appellant's pleas the letter of applicant to Dr. Clark, the Director, it becomes fully apparent that the right of oral reply was denied to the appellant. In the letter to Dr. Clark, dated March 20, 1968 (J.A. 83) the appellant specifically called to his attention appellant's request for a "discussion of past performance difficulties" and "discussion concerning the new assignment relative to establishing the authority and resources which would be required to carry out the task" and stated further that the "central point at issue ... involves a request for a fair appraisal of my past performance and difficulties for the purpose of providing me with the necessary visibility to approach the future with some degree of confidence." He asked to meet with Dr. Clark. The request was denied. (J.A. 104).

C. The Appellees Did Not Make a Decision "on the Answer."

A further breach of statutory and regulatory procedural requirements exists in the failure of the agency to weigh, consider and respond to appellant's reply. His pleas for consideration of past treatment and for an assurance that the future would be free of past lack of support and isolation were completely ignored. 5 U.S.C. 7501 (b)(4), Civil Service Rules 752.202(b).

Appellant is not aware of anything which would indicate that the

agency, the Civil Service Commission or the District Court considered appellant's reply so as to conform with the statutory directive that a decision of discharge be based "on the answer." 5 U.S.C. 7501(4)

Appendix A. The appellees chose to base their entire case on the narrow events of January 1968. The agency produced neither witnesses nor records to dispute appellant's well corroborated testimony that he had been in complete isolation for six months and semi-isolation for approximately two years prior to his "refusal to carry out official assigned job for the period Jan. 11, 1968, through the date of this notice." (Emphasis supplied) His former supervisor, Mr. Roberts, was not called to deny the harassment meted out by him for the two years. There is no denial that Mr. Thompson, Director Clark and all top officials had been made aware as early as May 1967 of appellant's grievance. (J.A. 66-68). If appellant's reply had not been ignored, the whole range of appellant's defense would have been properly weighed and the questions relating to bias, prejudice, estoppel, mitigating circumstances, abuse of regulations and harassment of appellant would have been considered and the discharge would not have been consummated. Appellant's answer to the charges is thorough and well documented and is set in full in the Joint Appendix pp. 38 to 82.

Putting the facts together, and there is no dispute as to what happened, appellant was not as a matter of law discharged for cause, given a proper opportunity for oral reply nor was his reply considered as the law requires and these failures to comply with the

statute alone constitute grounds for invalidation of the discharge.

II.

Procedural Errors of Appellees Vitiating Appellant's Discharge

A discharge of an employee in the competitive service of the United States Government is invalid where there exists substantial procedural error. Powell v. Brannan, 196 F.2d 871 at 873 (1952), 91 App. D. C. 15. The record here shows that the agency in discharging appellant failed to comply throughout with procedural requirements which were inextricably involved in the circumstances of the firing of the appellant.

The history of the years preceding 1968 have been set forth in full detail and are not in dispute. The facts show that appellant had been in virtual isolation, that the agency failed to give him support or guidance or consultation. To an active, dedicated employee, the effect of this treatment was one of confusion and frustration. In order to perform any task, it was essential that the appellant be assured, through meaningful discussion, that he would have a fair opportunity to perform fully and progress in the organization and that he be advised of any shortcomings, if any. It was the failure of the agency to perform over the years, as required by its regulations, which was the cause of the appellant's conduct in 1968. Furthermore, the failure of the agency to provide a job description

or even to formally assign appellant to the new job, takes away from the charges any substantial basis. Added to these departures from the regulations were the placing of appellant on Leave Without Pay without his consent. The regulatory provisions and the manner in which they were violated are as follows:

A. Supervisors at NASA were required to evaluate the performance of subordinates annually and to "discuss the results with employees . . ." "It is at these times that supervisors are to make sure that their employees understand their duties and responsibilities and are fully aware of the work objectives and what is expected of them. These discussions are not to be handled as a perfunctory obligation. There should be a genuine effort to increase employee effectiveness through improved communications and relations." (Emphasis supplied) (J.A. 32). No such discussion took place. The appellant has testified to this and the agency which has control of records produced no records nor did it call Mr. Roberts, the Division Chief, or even deny these facts. The failure of the agency in 1966 and 1967 to comply with its regulations through deliberate neglect of performance of prescribed duties is the direct cause of the alleged failure to perform on January 11, 1968, and the events which followed. If the agency had complied with its own regulations, the appellant would not have been forced to unorthodox, but fully justified, means of communication.

B. The failure to submit a notification of Assignment to the appellant and the failure to prepare and submit to appellant a

Job Description prior to the occasion on which it is alleged he failed to perform assigned duties is in clear violation of the Civil Service Commission's, as well as the NASA's regulations. (J.A. 24-26). The purpose of the notice of assignment according to the Commission's regulation is: "To determine the status and rights of employees. . . ." and further, "They (assignments) are the basic source documents by which his (the employee's) rights and benefits under the laws and regulations pertaining to Federal service are determined." The position description is defined as a position "consisting of all the duties and responsibilities currently assigned... by competent authority..." (J.A. 25) Among other objectives is that of providing "the basis of orderly, efficient and economical accomplishment of the work of the organization" and it is "required" that "A written record of the basic duties and responsibilities assigned to a position must be prepared before an employee can be hired or assigned." Such a position has clearly defined operations, tasks and duties and responsibilities and the provision for supervisory control and supervisory requirements. The written record should clearly state "what work is to be performed, how it is to be performed and what the consequences of error are..." [Emphasis supplied] (J.A. 26)

Of utmost significance is the declared purpose and use of the Position Description which states flatly that it is to be used "as a basic evidence in appeals cases." (J.A. 26). Employees are to be furnished copies and position descriptions "are required for all

employees under the Classification Act." (J.A. 26)

Of further significance here is the requirement that:

"Employees are to be informed of their duties, work objectives and performance requirements at the time they report or change to new positions." [Emphasis supplied] (J.A. 26)

Viewed against the entire circumstances, the failure of the appellees to comply with its regulations and those of the Civil Service Commission in these respects constitutes a fatal flaw. Service v. Dulles, 354 U.S. 363, 1 Led 1403; Roberts v. Vance, 119 App. D.C. 367, 343 F.2d 236 (1964). The record is without dispute that although appellant was given a Position Description in May of 1967 (after 18 months' delay), it was thereafter not applicable because he was not, after that date, assigned any duties under the May 1967 Position Description but left in complete isolation until November 1967 when he was transferred miles away from his original post to a new division, new duties and with new supervisors. The necessity of an official Assignment and Job Description in the new division was dramatically demonstrated by the urgency with which Mr. Thompson, the supervisor, moved to secure both of these documents when appellant indicated on January 11, 1968, the impossibility of performance by January 13 under existing circumstances. (J.A. 23, para. 11(a) It should be noted that the only specific task described in the letter of charges was that directed by Mr. Thompson on January 11, 1968 at a time when neither an assignment nor position description was in effect. In remedying this lack, papers were prepared and although they show a date of January 14, the assignment and position descriptions, as found by the Board of Appeals and Review, Civil

Service Commission, were not officially given to appellant until January 24, 1968. At this time appellant continued to ask for a full conference on whether he would be given adequate support in order to permit performance and also to receive an evaluation and an understanding of what, if any, his failings were and what the future held for him in the agency so as to avoid a repetition of past inequities.^{4/} However, he was never given other specific task assignments although the new job description described a variety of duties including the type of particular task given him on January 11 for completion on January 13. The day following January 24, 1968, he was placed on involuntary leave without pay and told to take his things and leave. These events point up one of the key failures of management which was to provide an Assignment and Position Description covering the period of alleged failure to perform an assigned task.

^{4/} Appellant, in stating his reasons why it was not possible to perform, outlined certain requirements such as those relating to office space, secretarial and telephone service, concerning which difficulties had arisen after the move to Mr. Thompson's division. The record is clear that these matters were symptomatic evidence of the lack of communication and understanding between appellant and agency and that as he stated in his reply to charges, his main concern was that "conditions be provided whereby a reasonable and proper relationship could be developed between the writer, his supervisor and other elements of the Directorate." Further pointing up what appellant meant by "conditions", there is a further statement in his reply that it was not possible to go on blindly working, hoping everything would work out but that, instead, some understanding would have to be reached because, as he said, "I had already done this [tried to perform] on other previous occasions.." "While subject to environmental conditions which were both intolerable and near impossible to perform under."

C. Apart from the complete lack of authority to place the appellant on leave without pay (which requires the employee's consent,^{5/} (J.A. 30, 55) the series of departures from the compliance by the agency, with Civil Service and agency regulations, makes the letter of charges procedurally inadequate. In order to lawfully separate an employee on the grounds chosen by the agency it would have been necessary to charge that he did clearly refuse to perform during a period of time when there was in existence a lawfully effective assignment to a job and a currently applicable Position Description (in this case an entirely new assignment), and that the employee was permitted an opportunity to perform. The Letter of Charges here alleges that beginning with January 11 and up to the date of February 13 (the date of the Letter) the basis for firing was established. Consequently, the Letter failed to state an offense which would support discharge for the reason that it did not state a failure to perform a task which the appellant was required to perform, nor did it state a set of circumstances where appellant was permitted to perform. When there is added to the inadequacy of the charges the violation of regulations by the appellees which colors and controls the period of alleged "wrongdoing" by appellant, it becomes clear as a matter of law that the discharge was invalid.

Thus, on several grounds, all fully established, the appellees failed substantially to conform not only with the law and regulations which went to the heart of the administrative decision but with any

^{5/} The Director in his decision held that LWOP was improper action. (J.A. 88)

lawful standard of fairness which governs removal proceedings. Because of these procedural defects the discharge was invalid.

III

Appellant Constructively Filed a
Grievance Which Was Not Accepted
And Processed As Required By Law
And Regulations.

It is conceded by the appellees and by the decisions of the Civil Service Commission that, if only appellant had filed a piece of paper labeled "grievance" and brought up all of the same points and circumstances which were the stated reasons why he felt he could not perform, he would not have been fired. This means that appellant was not fired for incompetency or lack of ability or for any mistakes in past performance or for improper conduct on the job or lack of character but solely because he repeatedly asked to be heard on very real and significant difficulties which prevented performance. All of the difficulties he described were within the control of management. They could have and should have met with him, discussed these "grievances" between them and resolved them. This was the agency's duty and obligation and it is no answer to say he failed to file the right piece of paper.

In fact, appellant's reply to the notice of intent to discharge him, which is set forth in full in the Joint Appendix, can be interpreted only as filing a grievance (J.A. 38 to 82). In this reply, appellant shows that he had been asking for a long time in writing to have management tell him what was wrong and to provide a means for adjustment. Thus, in May 1967 he sent a memorandum to all involved

persons, including Mr. Thompson, at the Directorate level, as well as to the Director and to the office of personnel. In that memorandum he stated that no one can perform under the circumstances which had existed, even then, for a long period of time. (J.A. 66 at 69) In October 1968 after sitting idly, completely ignored in the reorganization, he wrote to the Directorate and stated that he had heard informally that he was to go over to that Division of NASA and accompanied this with a plea to discuss what had been happening to him. (J.A. 71) In November and December 1967, he continued to ask for a meeting with his new supervisors to insure that the old treatment would be ended and that he would have support in the future. (J.A. 218, 221, 222) He continued to ask this orally and in writing right up to the day he was fired on March 29, 1968.

Certainly these facts add up to a grievance as a matter of law for the law recognizes the theory of "construction" to establish the existence of conditions which determine the presence of technical conditions which have legal effect. The law frequently applies the principle of construction in order to avoid injustice from strict application of technical rules. For example, a temporary employee may be constructively considered a permanent employee or at least the government is estopped to deny such status where the government has failed to perform its duty to process the necessary papers to officially establish the permanent status of an employee. Semaan v. Mumford, 118 App. D.C. 282 (1964), 335 F.2d 704.

Justice requires that the court determine that appellant filed a grievance but that the agency refused to hear him on it and, instead,

fired him. Such action vitiates the discharge.

IV

The Discharge Is Invalid Because The Punishment
As A Matter Of Law And Regulations Was Harsh
And Unwarranted.

The circumstances of this case fit closely those found in Clark v. U.S., 162 C.Cl. 477, where the court held the discharge unlawful as unduly harsh. The language of the court is significant here:

"His discharge on these grounds was unduly harsh and unwarranted, and was an abuse of discretion by the agency that demands redress by this court. Gadsden v. United States, 111 C.Cl. 487, 78 F.Supp. 126 (1948), 119 C.Cl. 86, 100 F.Supp. 455, cert. denied, 342 U.S. 856 (1951); Knotts v. United States, 128 C.Cl. 489, 121 F.Supp. 630 (1954); cf. Hoppe v. United States, 136 C.Cl. 559 (1956), cert. denied, 355 U.S. 816 (1957)."

"This would be so in any case, but it is particularly true in this case, in view of plaintiff's good record with the Agency for nearly a quarter of a century. Since 1943 he had never been rated less than "very good", and "excellent" on several occasions. Letters or memoranda from his supervisors speak of him in high terms."

Appellant was an employee of impeccable record including military service of some 16 years; he was promoted regularly, received step increases, was rated satisfactory, and his file shows no letters of reprimand but, on the contrary, shows letters of commendation. The strong supportive evidence, documentary as well as the testimony of Division Heads and other substantial witnesses, bears this out. The grounds selected for separation were highly technical apart from other considerations of illegality. The regulations of the Civil Service

Commission require the exercise of careful judgment before discharge action is taken (J.A. 57) and this exercise must consider mitigating circumstances. (J.A. 58) It is not conceivable that a high grade employee should suffer extreme punishment of dismissal on the facts presented in this case, particularly when it is considered that simultaneously with notice of ^{proposed} dismissal he was placed on LWOP and given notice of denial of step increase.

While technically an agency has the authority to discharge an employee for insubordination, such power is not to be invoked blindly and without consideration of the facts and their relation to the purpose of the rule. Technically, each spouse who signs a joint federal income tax return is liable for whatever tax is eventually found due, but if one of the joint signatories has been embezzling funds and not reporting it as income, without the knowledge of the other, the courts have held the statute does not apply. Although the factual situation is not parallel, the theory of the courts in these cases establishes a principle applicable to appellant's case. The Court of Appeals for the Sixth Circuit recently said (in reversing the Tax Court which had blindly followed a purely literal construction of statutory language and where a party was subjected to an appallingly harsh penalty by the United States Government):

"We are not prepared to admit that the Executive Branch of our Government is so impotent or the Judiciary so ineffectual that relief may not be granted to such a victim." Huelsman v. C.I.R., 416 F.2d 477, at 481

NASA has a personnel manual which contains a Table of Disciplinary Offenses and Penalties. (J.A. 58) These standards are applicable to appellant's case and were not followed. The "offense" pertinent to appellant's discharge reads:

"22. Disobedience to constituted authorities or deliberate refusal to carry out any proper order from immediate supervisor having responsibility for the work of the employee; insubordination."

This same table lists recommended minimum and maximum penalties. Thus, for the first offense, the employee is subject to "Reprimand" as a minimum, and "Removal" as a maximum. For a second offense, the minimum is "suspension for fifteen days" and maximum is "removal". For the third offense, both minimum and maximum are "Removal". The agency in imposing and the Civil Service Commission in upholding the maximum punishment for a first "offense" under the circumstances of this case, imposed an "appallingly harsh penalty not justified by the facts [and] was arbitrary and capricious." The punishment was, as in Clark, unduly harsh and unwarranted, and constitutes an abuse of discretion.

CONCLUSION

The events of January through March 1968, are colored by and are the consequence of the agency's neglect of the obligations, required by law, of United States government officials toward its civil servants. The circumstances lead to the conclusion that appellant, in January 1968, was simply reacting to a long and unrelieved siege of neglect and abusive action carried on by the agency over a period of years.

The appellee agency seeks to carve out of a long history of efficient performance a single occurrence while ignoring the real issue between the parties. The agency has limited its evidence to technical matters occurring in January 1968. Appellant has fully established all of the material facts covering the entire pertinent period, i.e., all of the material facts occurring in the period before January 11, 1968, as well as the period following January 11, 1968, up to the date of discharge. These facts are set forth on pp. 13 through 32 of the Joint Appendix and constitute the record together with appellees' statement of facts (J.A. 33-36) on which the District Court based its ruling. The appellee agency which has available the books and records and witnesses did not contest appellant's facts. They stand as stated. The District Court found the facts not to be in dispute. This, then, is the record. It clearly established a whole pattern of misconduct on the part of the agency which must be considered in weighing the existence of statutory "cause", the absence of good faith of the agency in discharging the appellant and the failure throughout of the agency to conform with the statutes, with its own regulations and with the regulations of the Civil Service Commission.

For the foregoing reasons, the judgment of the District Court must be set aside with instructions to enter judgment for the appellant as prayed for in his complaint.

Respectfully submitted,

DONALD M. MURTHA
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Attorneys for Appellant



APPENDIX A

5 USC §7501. Cause; procedure; exception

(a) An individual in the competitive service may be removed or suspended without pay only for such cause as will promote the efficiency of the service.

(b) An individual in the competitive service whose removal or suspension without pay is sought is entitled to reasons in writing and to -

(1) notice of the action sought and of any charges preferred against him;

(2) a copy of the charges;

(3) a reasonable time for filing a written answer to the charges, with affidavits; and

(4) a written decision on the answer at the earliest practicable date.

Examination of witnesses, trial, or hearing is not required but may be provided in the discretion of the individual directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for and the order of removal or suspension without pay, and also the reasons for reduction in grade or pay, shall be made a part of the records of the employing agency, and, on request, shall be furnished to the individual affected and to the Civil Service Commission.

(c) This section applies to a preference eligible employee as defined by section 7511 of this title only if he so elects. This section does not apply to the suspension or removal of an employee under section 7532 of this title. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 527.

5 USC §7512.

* * * *

(b) A preference eligible employee against whom adverse action is proposed is entitled to -

* * * *

(2) a reasonable time for answering the notice personally and in writing and for furnishing affidavits in support of the answer.

BRIEF FOR APPELLEES

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,611

WALTER G. BURTON, JR., APPELLANT

v.

THOMAS O. PAINE, Administrator, National Aeronautics
and Space Administration, ET AL., APPELLEES

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

DEC 16 1970

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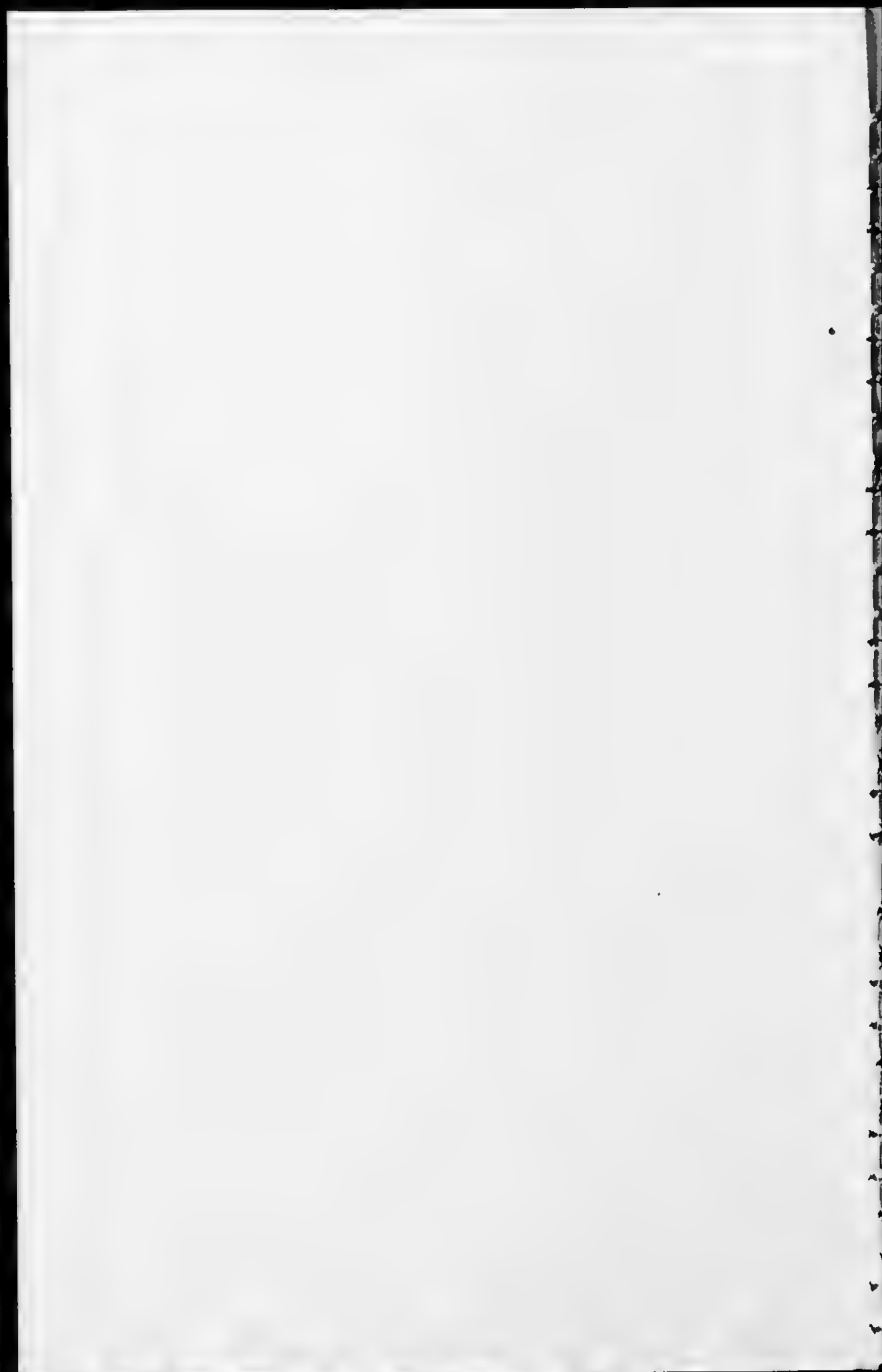
* Cases chiefly relied upon are marked by asterisks.

ISSUE PRESENTED *

In the opinion of appellees the following issue is presented:

Could appellant validly refuse to perform any job in his employing agency unless and until he was provided with a private secretary, an office with a window, special telephone service, and assurance of an immediate in-grade promotion and a prompt grade promotion?

* This case has not previously been before this Court.



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**Appeal from the United States District Court
for the District of Columbia**

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

This is an appeal from the District Court's order of May 26, 1970, granting summary judgment for appellees in this employee discharge case.

Appellant was an employee of the National Aeronautics and Space Administration (NASA) for approximately twelve years ending with his removal on March 29, 1968. The reason for his removal was his refusal to carry out his officially assigned duties for the period from January 11 through February 13, 1968 (JA 86). On appellant's

appeal to the Administrator of NASA, his removal was sustained on July 26, 1968 (JA 88-89).¹ On his appeal to the Civil Service Commission, the Appeals Examiner recommended on April 22, 1969 that no change be made in the removal action (JA 97).² On his appeal to the Board of Appeals and Review, United States Civil Service Commission, the Board affirmed the decision of the Appeals Examiner on June 27, 1969 (JA 103).³ Appellant then filed suit in the District Court, which awarded summary judgment for appellees (JA 36).

In January 1968 appellant was employed by NASA at the grade of GS-14 and was working in an assignment in the Manned Flight Support Directorate, Goddard Space Flight Center, Greenbelt, Maryland. On December 6, 1967,⁴ he had been given an assignment to develop a Management Information Control System (MICS) for the Directorate. On January 10, 1968⁵ appellant indicated he would no longer perform the assignment. On January 14 appellant was officially reassigned to the Office of the Assistant Director for Manned Flight Support. On January 19, at a meeting with the Deputy Assistant Director of that office, appellant was given a current position description. He indicated at the time that he still did not intend to carry out the MICS assignment but requested five days in which to study the position description and make a final decision. On January 24 a second meeting was held with the Deputy Assistant Director, and at that time appellant stated that he would not perform the assignment unless he were given (1) a private secretary,

¹ Agency hearings had been held on May 14, 1968.

² The Examiner's seven single-spaced pages of Analysis and Findings are set out in the joint appendix commencing at JA 91. Page JA 90 is mis-bound and should be between JA 93 and JA 94. Commission hearings had been held on January 14 and 17, 1969.

³ The Board's decision is set out in six single-spaced pages commencing at JA 98.

⁴ Appellant contends the date was November 22, 1967 (JA 41).

⁵ Appellant contends the date was January 11, 1968 (JA 41).

(2) an office with a window, (3) an "adequate" telephone system,⁶ (4) an immediate in-grade increase and (5) a promotion to grade GS-15 by June 1968 (JA 43). Appellant told the Deputy Assistant Director that he should not feel discriminated against, since he would not accept any job at Goddard unless his requirements were met (JA 121). Appellant was informed that his office was equivalent to the offices of those in similar positions, that because of personnel restrictions it was unreasonable of him to expect to have a private secretary, that the telephone situation would be looked into, and that promotions could be made only after a review of appellant's record at the appropriate time and could not be guaranteed (JA 43, 119-120). Appellant still persisted in his refusal to do the assigned job. He was then advised that he would be placed on leave without pay at the close of business that day (JA 120).⁷

On January 31, 1968, appellant prepared a memorandum setting out in substantial detail what had occurred at the January 24 meeting (JA 45-52). The memorandum reiterates the five requirements for appellant's accepting any job (points 3.1.10 and 3.8.2 of appellant's memorandum, JA 48-49). On February 2 appellant again met with the Deputy Assistant Director, concerning his pay status, and was informed he would be returned to pay status if he agreed to perform the job. Appellant again indicated he would not accept the job or perform the assigned duties (JA 122). On February 13 appellant was served with a notice of proposed removal (JA 42-45). On February 28 he made a written reply of some forty-five pages (JA 38-82). On March 13 he discussed

⁶ Appellant apparently meant an arrangement whereby messages would be recorded in his absence. See JA 74 (appellant's note of November 22, 1967) and JA 73 (reply of Administrative Operations Officer that fund restrictions prevented such an arrangement).

⁷ Appellant complains in his brief that this action was improper. The Administrator of NASA agreed in his decision of July 26, 1968, and appellant's pay and leave accounts were accordingly corrected (JA 88-89).

the proposed removal with the Deputy Assistant Director for three hours and again on March 15 for one and one half hours (JA 105-106). On both occasions he stated again that he would not do the assigned job. On March 26, 1968, appellant was served with the notice of decision to remove (JA 86). Appellant then commenced the chain of appeals noted above.

ARGUMENT

There is substantial evidence supporting appellant's discharge for cause.

There is no question that an employee, even a civil service employee, can be discharged if he refuses without good cause to do his job. Appellant here refused to continue performing his assigned duties at NASA unless he were given a private secretary, an office with a window and special telephone service.⁸ While it might be argued (although not on this record) that a private secretary and the other requested accoutrements would be needed to perform certain tasks, appellant here refused to do *any* job at the Goddard Space Flight Center unless and until all his demands were met.⁹ His supervisor explained why his demands could not be met, but appellant persisted in them and was removed.¹⁰

The standard of review in a case such as this is whether there is substantial evidence to support the

⁸ These three conditions were "musts." See JA 47-48 (paragraphs 3.1.10.1 - 3.1.10.6 of appellant's memorandum of January 31, 1968) and JA 95 (findings of the Appeals Examiner). In addition, appellant made three unequivocally worded demands for an immediate in-grade promotion, a prompt grade promotion and a "proper relationship" with his supervisor and other members of NASA (JA 48). As to the special telephone service, see note 6, *supra*.

⁹ See JA 49 (paragraph 3.8.2 of appellant's memorandum of January 31, 1968), JA 121 (testimony of Henry F. Thompson, appellant's supervisor, at the NASA hearing) and JA 189-191 (appellant's testimony at the Civil Service Commission hearing).

¹⁰ JA 119-120.

agency's decision to remove the employee.¹¹ There is such substantial evidence, much of it provided by appellant himself.

After initially refusing to perform his current assignment on January 10, 1968, appellant was provided with an updated position description on January 19 and stated he still did not intend to carry out the assignment or any other assignment until his demands were met. He was given five days to study the position description, and at a meeting on January 24 he reaffirmed his decision not to perform any assignment. On January 31 he wrote a memorandum to his supervisor, which is set out in full at JA 45-52, summarizing what had occurred at the January 19 meeting. The memorandum reiterates appellant's non-negotiable demands (paragraphs 3.1.10.1-3.1.10.6 at JA 47-48) and further states: "It should be noted that the writer is doing just as he is suggesting when he refuses any further work assignments until such time as a complete performance appraisal has been rendered him for objective comparison with his own" (paragraph 5.2.1.3 at JA 51).¹² On February 2, appellant again informed his supervisor that he would not do the assignment (JA 122). On February 13, appellant was served with a notice of proposed removal (JA 42). Appellant's removal was, on this record, clearly for cause.¹³

Appellant's procedural objections are without merit,¹⁴

¹¹ *Zimberg v. United States*, D.C. Cir. No. 23,122, decided November 3, 1970, slip op. at 3, citing *Dabney v. Freeman*, 123 U.S. App. D.C. 166, 168, 358 F.2d 533, 535 (1965); *Eustace v. Day*, 114 U.S. App. D.C. 242, 314 F.2d 247 (1962).

¹² This apparently referred to a demand in addition to those already noted.

¹³ See JA 42-45 (notice of proposed removal), JA 86-87 (notice of decision to remove), JA 89 (decision of NASA Administrator), JA 95-96 (decision of Appeals Examiner) and JA 102-103 (decision of Board of Appeals and Review). The fact that appellant was discharged for cause is dispositive of his contention that the decision was not made "on the answer" by him to the notice of proposed removal (Appellant's brief, pp. 18-20).

¹⁴ Appellant complains of procedural errors, chief of which is that he did not have a position description prior to refusing to perform

as are his arguments on "constructive" grievance¹⁵ and denial of an opportunity to answer orally.¹⁶

Appellant's final contention is that while he concedes that an agency may remove an employee for insubordination, nonetheless the removal in this case was harsh and unwarranted. The case on which he relies, however, had substantially different facts.¹⁷ The employee there was

his assignment. The record is clear, however, that when appellant refused his assignment and it was discovered there was no position description in his file, one was then prepared. The position description for appellant's assignment was delivered to him in a meeting on January 19, 1968. A second meeting was held on January 24 (to give appellant time to study the position description), and at that meeting he flatly stated he would not do the assignment in the position description or any other assignment unless he were given a private secretary and an office with a window. Appellant confirmed these requirements in his memorandum of January 31 (J.A. 45-52). And see JA 102 (findings of Board of Appeals and Review on this point). Appellant also complains of having been initially placed on leave without pay, but that issue was rendered moot by the corrective action of the Administrator on June 26, 1968 (JA 88-89). The Appeals Examiner wrote an extensive and lucid analysis of the procedural aspects of appellant's removal (JA 91-93, 90).

¹⁵ Appellant argues that his reply to the notice of proposed removal should have been interpreted by NASA as a "constructive" grievance and dealt with according to grievance procedures. Prior to the notice of proposed removal, appellant had been advised that if he felt he were not being treated fairly he should use the grievance procedure and that refusal to do his job was not the way to handle the matter. Appellant specifically refused to utilize the grievance procedure (JA 126-127, 185). See also JA 102 (findings of Board of Appeals and Review on this point.)

¹⁶ Appellant discussed his proposed removal with his superior, Henry B. Thompson, Deputy Assistant Director for Manned Flight Support, for three hours on March 13 and for one and one-half hours on March 15, 1968. The record does not support appellant's allegations of a one-sided conference (JA 105-106). Appellant quotes extensively from *Ricucci v. United States*, 192 Ct. Cl. 1, 425 F.2d 1252 (1970). That case, however, involved the appointment of an investigator from another division rather than the employee's supervisor as "oral reply officer." The record there clearly showed that the investigator had not participated in any kind of discussion with the employee on the reasons for his proposed removal.

¹⁷ *Clark v. United States*, 162 Ct. Cl. 477 (1963).

discharged for misuse of a government automobile which the court found to be insufficiently serious to warrant a discharge.¹⁸ There was not, as here, a flat refusal to do an assigned job. Appellant here really asks this court to substitute its judgment and wisdom for that of the agency. The law is clear that an administrative decision to discharge an employee is not reviewable on those grounds.¹⁹

Since there is substantial evidence supporting the agency's determination and since appellant's claims of procedural irregularities are without merit, the District Court's grant of summary judgment to appellees was correct and should be sustained.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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United States Attorney.

JOHN A. TERRY,
ELLEN LEE PARK,
JOHN E. ROGERS,
Assistant United States Attorneys.

¹⁸ The employee there permitted his wife to use a government car for personal use during a period of about five weeks. The use, however, occurred in a foreign country where the employee's own car had been damaged beyond repair, he had been denied a permit to import another personal car, and he had no other car available to him. *Id.* at 484.

¹⁹ *Hargett v. Summerfield*, 100 U.S. App. D.C. 85, 88, 243 F.2d 29, 32, cert. denied, 353 U.S. 970 (1957). See also *Powell v. Brannan*, 91 U.S. App. D.C. 16, 17, 196 F.2d 871, 873 (1952).

REPLY BRIEF FOR APPELLANT

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REPLY BRIEF FOR APPELLANT

Appellant's Brief fully states the facts and the law on which appellant relies. However, reply to appellees' Brief is necessary to correct certain representations which are not in accord with the undisputed record.

1. Appellees' counterstatement of the issue does not state the basic issues of this case.^{1/} In

1/ Aside from the flippant nature of the statement it

addition to operating outside of the law and regulations, appellees for nearly two years maintained a "cold war"

1(cont'd.) is misleading for it omits the main grievance which appellant had been presenting continuously over the years, i.e. "That conditions be provided whereby a reasonable and proper relationship could be developed between the writer, his supervisor, and other working elements of the Directorate." (JA 48, Item 3.1.10.6)

Appellees also seem to have forgotten they brought out through one of their own witnesses at the agency hearing, that appellant in January 1968 advised the chief personnel officer, with documentary support, of this long history of abusive and unlawful treatment. This is reflected in the colloquy between Mr. McCartin, representative of NASA and witness Mr. Sumser relating to a conference on Feb. 6, 1968, prior to the issuance of the Notice of Proposed Removal on Feb. 13, 1968: [Agency transcript pages 154, 155, 156]

Q. Did you, or did Mr. Burton during this lengthy conversation indicate any problems other than those four or five points stated in the criteria?

A. Mr. Burton showed me two memoranda I think which he had written while he was employed in the Manned Flight organization which he had, he indicated copies were to have furnished to the Personnel Office but never were. He had copies of memoranda, the contents of which I couldn't really relate at this point. But reflecting back on some difficulties which he had encountered in previous years.

* * * * *

Cross-Examination by Mr. Murtha

Q. So that he did have a problem relating to relations or relationships with supervisors?

A. Yes. He had -- I must admit I can't recall precisely the contents of either memoranda. I can recall some of the contents of one but not both.

Q. And he felt these problems should be resolved.

A. That is what he showed me the memos for, as an indication of some past history.

against the appellant. Appellees, while giving appellant promotions and step increases, at the same time placed him in isolation, failed to provide support, ignored their obligations to give consultation and guidance until by January 1968 the appellant "dug in his heels" and in essence said that no one can perform under these circumstances which you have created and insisted on a resolution of this abortive relationship. This, of course, is the all pervasive issue and the appellant has documented it thoroughly in the record which is not in dispute.^{2/}

1 (cont'd.) * * * * *

C. But in the oral conversation, this was one of the problems that he wanted solved?

A. It is one of the problems he felt needed solving.

Q. Now didn't he also tell you that he thought it wasn't a matter to be resolved by Personnel, but by having an opportunity to sit down with Management and get these things straightened out?

A. No, I think he, in our conversation, he referred to the fact that one or both, Personnel or Management, should address themselves to the problem.

C. But he did think that Management should concern itself with solving the problem.

A. Yes."

2/ Appellees, perhaps inadvertently, but nevertheless significantly filed with their typewritten brief a document entitled "Record Material Relied Upon by Appellees." In it appellees advise the Court that among other portions it is relying on Joint Appendix pages 18-20. These pages are a portion of appellant's "Statement of Facts Pursuant To Local Rule 9(h)" and the Court's attention is again directed to the full text (JA 13-32). It is essential also to note that

Furthermore, appellees, in stating the issue, completely ignore the crisis nature of the situation which they had spawned by the treatment which appellant had received since arriving in Mr. Thompson's unit. It is not disputed that appellant had asked, before coming over in October 1968, for a discussion of his past employment-management difficulties and that management refused; nor do they deny that appellant's furniture was unceremoniously dumped into an already crowded room;^{3/} nor do they deny that Mr. Thompson refused to send out a memorandum to provide support for appellant (JA 79), or that during the conferences in January he told appellant that he wasn't even sure that his new position would support a Grade 14. (JA 49, Item 3.5.2.)

Finally, without restating all the pertinent facts in this regard, there is certainly nothing referring to telephone, secretaries, etc. in appellant's griev-

2/ (cont'd.) the appellees in the District Court tried to have these facts removed from the record and that Judge McGuire after argument and briefing denied their request (Docket Entries Jan. 21, 1970 - April 1, 1970). Appellees did not dispute appellant's facts and the District Court found specifically that the facts were not in dispute (JA 37).

3/ The interchange of memoranda between appellant and Mr. Mathis regarding such practical matters as space, telephone, etc. (JA 73-74).

ance of May 19, 1967 (JA 66), wherein he stated that
"3.2 This being the case, I submit that, * * * as far
as I am concerned no one, under similar environmental
conditions, could adequately perform this or any other
assignment." (JA 68 - Note that copies of this letter
went to Thompson and Personnel), nor is there any men-
tion of such mundane matters in appellant's request for
oral appeal to Dr. Clark (JA 83-85).^{4/}

- 4/ Letter to Dr. Clark of March 30, 1968, appellant in
addendum to letter to Dr. Clark states the issue
concisely:

"Condensation of the Central Problem

For a number of years the management offi-
cials of the Manned Flight effort have found it
expedient to utilize my potential in an environment
of almost total isolation. Under these circumstances,
whenever work was assigned the necessary resources
and support were never made available. In most cases
no comment could be elicited concerning the value of
my effort or the difficulties encountered in carrying
out the assignments. Part IV of Enclosure 1 details
some of my experiences, assignments, and difficulties
in trying to achieve assigned objectives over the
years.

"Of paramount importance is the fact that I
have never before refused an assignment even under
the severe restraints that have been applied. In
this case I could not, in good conscience, accept an
assignment which I felt from past experience could
not be carried out; without clarification of the
resources and authority which would be assigned to
complete the task.

"Also of vital concern to me, as was made
quite clear, was the matter of performance appraisal,
and career growth potential of the assignment in
question. Clarification in these two areas was also
denied.

2. An accurate understanding of the events of January 1968 is important in establishing the procedural defects which vitiate appellant's discharge. Consequently, it is necessary to correct the statement of appellees that appellant was reassigned on January 14 (Aple. Brief, p. 2). There were two documents necessary to place appellant in a position from which he could be discharged. One was a standard Form 50 officially reassigning him to the job under Mr. Thompson (Code 800), the second was a position description. The record is heavily documented with agreed facts on this score. The assignment document, although bearing a date of January 14 was first shown to appellant on January 19, together with a Job Description, and then by agreement, appellant was given until Jan. 24, 1968, to examine these documents. (JA 41, 94)

These facts have further significance because the charges recite failure to perform his assigned task

4/ (cont'd.) "To date, Mr. Thompson has chose to ignore these important considerations and instead placed his emphasis on monetary and other minor aspects of the problem.

"It should also be noted that even though I have been placed on Leave Without Pay, against my wishes, I have reported to work as usual and continued to carry out routine work in the same manner as required in the past.

"In summary, the assignment was refused primarily because the authority and resources necessary to carry out the task were not made available

on January 11. This job was to be completed by January 13. Appellant was placed on Leave Without Pay on January 25, and there is no evidence nor is there any charge relating to any other task although the Job Description under the Assignment, as of January 24, included references to many other functions in addition to the January 11 assignment (JA 112). Consequently, it is not correct to state as appellees have done on page 4 of their brief, as an absolute conclusion, that appellant refused to perform any job because, until a request was made and a refusal given, it is only speculative to assert he would refuse.

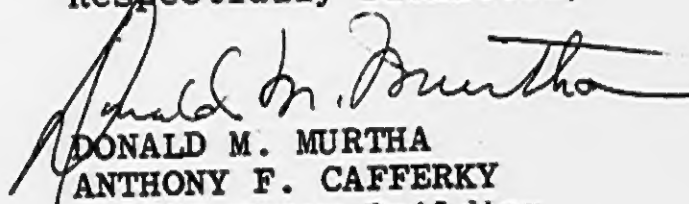
CONCLUSION

Equity requires that the Court look beyond the bare allegation of failure to perform on one occasion and to determine if in fact the agency itself made performance impossible. Certainly, where division heads and high ranking personnel have come forward to support appellant (App. Brief, p. 5), and have established appellant's qualities of dedication, energy, efficiency and sincerity, the burden is on the agency to answer the charge that the

4/ (Cont'd.) and secondarily because career growth potential of the job and the employee were items which were completely excluded from the discussion."

agency is at fault rather than the appellant. For these reasons, and because the law and regulations were not complied with, as fully set forth in appellant's brief, appellant prays that the judgment of the District Court be set aside with a direction to enter judgment for the appellant.

Respectfully submitted,


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